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HYDROELECTRIC DEVELOPMENT AND LICENSING PROCEDURES

JOINT HEARING BEFORE THE SUBCOMMITTEE ON ENERGY REGULATION AND THE SUBCOMMITTEE ON WATER AND POWER OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE NINETY-SEVENTH CONGRESS

SECOND SESSION

TO EXPLORE WAYS IN WHICH THE FEDERAL LICENSING
PROCESS CAN BE ACCELERATED IN A MANNER CONSISTENT
WITH THE PUBLIC INTEREST

FEBRUARY 24, 1982

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(III)

HYDROELECTRIC DEVELOPMENT AND LICENSING PROCEDURES

WEDNESDAY, FEBRUARY 24, 1982

U.S. SENATE,
SUBCOMMITTEE ON ENERGY REGULATION
AND THE SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The subcommittees met, pursuant to notice, at 2:15 p.m., in room 3110, Dirksen Office Building, Hon. Gordon J. Humphrey and Hon. Frank H. Murkowski, presiding.

Present: Senators Humphrey and Murkowski.

Also present: Howard Useem and Russell R. Brown, professional staff members.

OPENING STATEMENT OF HON. GORDON J. HUMPHREY, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator HUMPHREY. Good afternoon. Let me say at the outset that this is a joint hearing of the Subcommittee on Energy Regulation and the Subcommittee on Water and Power, and I intend to reserve most of my remarks for the question and answer period. However, I would like to make a few introductory comments.

As we are all aware, there has been an extraordinary amount of interest in the development of hydroelectric energy resources over the past few years. This has been especially true in New England where literally thousands of existing dams which lay dormant for years have suddenly been made attractive by the combination of rising alternative energy prices, marketing guarantees under the Public Utilities Regulatory Policies Act, and substantial Federal tax incentives. What was once a mere trickle in Federal permit and license applications has quite literally become a flood.

From my home State of New Hampshire, the number of applications filed with FERC has risen exponentially over the past several years, and a number of projects are presently under construction. Just last week I was present for the dedication of a 6-megawatt redevelopment project at Garvins Falls near Concord, N.H., which is the first of 20 demonstration projects under the 1978 DOE small-scale hydroelectric program to actually come on line, but the present hydro boom has brought its problems as well.

Many small damsite owners in my State have found themselves surprised and often intimidated by outside challenges which, if even in the form of a simple preliminary permit application, threaten them with the loss of their site and their property.

In other instances, competing applications for a single site, or for separate contiguous sites, has resulted in whole towns feuding over development rights and who promised what to whom. Other interests, especially fishermen, recreational boaters, historic preservationists, and environmentalists, fear that the safeguards provided by a number of Federal statutes will be thrown out of the window in the developer's headlong rush to harness what seems to them to be a relatively insignificant amount of energy potential. All of this has added up to an unfortunate amount of ill will among parties whose interests are not always that far apart.

Today we are holding the last in a series of joint hearings by the Energy Regulation Subcommittee and the Water and Power Subcommittee. Two very productive field hearings were held last summer in New Hampshire and Alaska. On October 19 the first joint hearing was held here in Washington to explore ways of simplifying and improving our Federal licensing process. I wish to touch on just a few of the issues raised in these previous hearings.

The most obvious issue we are faced with is how to cope with the tremendous increase in filings at the FERC. I noted in Commissioner Sheldon's prepared statement that preliminary permit applications jumped from a total of 76 in 1979 to nearly 1,900 in 1981. Despite the truly remarkable job that FERC has done in keeping up with this caseload, there is simply no way we can expect them to continue this level of performance as the bulk of these permit applications mature into full license and exemption applications in the years ahead.

I will be interested in the comments of each of the witnesses on how we can prevent this potential logjam from occurring, whether by providing for expanded exemption authority, instituting a one-stop shopping approach at the FERC, or by returning licensing authority to individual States who choose to accept it and who can qualify for it.

The second issue of concern is the question of how to award development rights at the contested sites. I know that FERC has been moving toward the concept of an owner preference, and I wonder whether legislation is needed to clarify both the definition of site owner and the owner preference at privately owned existing dam-sites.

Finally, I am interested in the issue of filing fees and user fees as a means of funding the licensing activities of the various Federal agencies. This is especially critical with FERC and the Fish and Wildlife Service, and I would be interested to know what plans are in the works to raise revenues in the Fiscal Year 1983 budget request.

Senator Murkowski.

**STATEMENT OF HON. FRANK H. MURKOWSKI, A U.S. SENATOR
FROM THE STATE OF ALASKA**

Senator MURKOWSKI. Thank you, Senator Humphrey. It is certainly a pleasure to be a cochairman along with Senator Humphrey of New Hampshire in this joint effort of the Energy Regulation Subcommittee of which he is the chairman and the Water and Power Subcommittee which I chair.

I want to welcome all of you to the hearing, and particularly the witnesses that are before us today. As Senator Humphrey indicated, this is the fourth in a series of hearings by my Water and Power Subcommittee and Senator Humphrey's Subcommittee on Energy Regulation, regarding hydroelectric development and related licensing procedures.

The subcommittee was to have heard from Congressman Moorhead today. I understand that he will be submitting for the record his testimony.

As you all know, the subcommittees share the goal of encouraging the development of our Nation's remaining hydroelectric potential in a manner consistent with the public interest. I am particularly anxious to learn what efforts can be taken by the administration using existing authority to further such development. In turn, I know that the members of the committee would appreciate being advised of where existing authority falls short of basically getting the job done.

Based upon the previous testimony before the subcommittees, I believe that much more can be done at the Federal level to improve the licensing procedure. I am well aware that the Congress has imposed over the past few years increasingly heavy responsibilities on Federal agencies for review of permit or license application, but this burden has also fallen on the applicants, and perhaps to a more extreme degree, and it is in this regard that I support the efforts of the Federal Regulatory Commission to simplify procedures.

However, I really do not detect as yet such an effort on the part of other Federal agencies who are really a very integral part of the review process.

It would appear that it is the applicant who has to toe the line for submission of material and preparation of documents while Federal agencies, on the other hand, offer perhaps in some cases one delay after another. It may be more of an attitude problem in that the reviewing agencies sometimes do not express how something can happen, but have 10 or 15 reasons how not to make it happen. I am sure we would agree that is not in the best interests of why we are here. We have all heard the story time and time again I'm from the Government and I am here to help you, and we are all aware of the response to that. The point I want to make is that I think that applicants need encouragement and not discouragement, and we can do a better job in that area. I hope that the administration's testimony today will contradict any misapprehensions that I may have in that area.

While the hearings have previously focused on non-Federal development, I am also concerned for the apparent lack of progress in developing Federal resources. It is clear that funding is a critical problem, and given the premise that the development of our Nation's hydropower resources is in the national interest, it is appropriate to investigate other than traditional funding mechanisms. In this regard, I intend as chairman of the subcommittee to explore the potential for establishing a hydroelectric development fund to be used for the financing of additional Federal resources. Perhaps such a fund could be initiated using minimum surcharge on sales of federally generated hydropower. For example, a 1-mil-per-kilo-

watt charge could provide about \$130 million per year at present generating levels.

Although it may sound simple, such a proposal could be quite complicated in implementation and effect, and I would hope to solicit the views and advice of the administration as well as representatives of the private and public utility industry and the power consumers.

Another approach to the development of the Federal resources would be to encourage non-Federal participation. Earlier this year the Senate passed Senate bill 306, a bill which would authorize the construction of additional generating facilities at Bureau of Reclamation projects. Included in that bill was a provision allowing non-Federal development at five specific sites. It may be that this concept should be expanded to allow the Secretary to determine where such development would be appropriate without having to go through a rather tedious piecemeal project-by-project authorization process. This is another option which I feel should be examined.

First let's see what can be done within the confines of existing law and administrative authority. Prior to calling on the witnesses, I would like to refer to a situation that I think bears notice with regard to the rules and procedure of the Senate Committee on Energy and Natural Resources. I refer to the following, and I mention this in a constructive sense, that each witness who is to appear before the committee or subcommittee should file with the committee or subcommittee at least 24 hours in advance of the hearing the written statement of testimony and as many copies as deemed appropriate.

I would like to note for the record that the committee received the copies of Commissioner Sheldon's statement early yesterday, Mr. Leisz statement about 10:30 this morning, and Commissioner Broadbent's statement at 11 o'clock.

It is not as if this hearing was scheduled without due notice. In fact, this is the third time that we have been scheduled to meet, and again, don't misunderstand my comments, but it is very helpful if we could have statements in advance. This has been noted by other committee chairmen. With that I will again repeat my welcome and look forward to the testimony of Georgiana Sheldon, Commissioner of FERC. Welcome, Georgiana. We are looking forward to your testimony.

Senator Humphrey, do you have anything to add?

Senator HUMPHREY. No.

Senator MURKOWSKI. Please go ahead.

STATEMENT OF HON. GEORGIANA H. SHELDON, VICE CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION, ACCOMPANIED BY RONALD A. CORSO, ACTING DIRECTOR, DIVISION OF HYDROPOWER LICENSING; AND KRISTINA NYGAARD, ASSISTANT GENERAL COUNSEL, HYDROELECTRIC LICENSING

Commissioner SHELDON. Thank you very much, Mr. Chairman. Senator Murkowski and Senator Humphrey, I would like to introduce to you two of our staff who are with me at the table this afternoon.

On my left and your right is Kristina Nygaard, Assistant General Counsel for Hydroelectric Licensing, and on my right, Ronald Corso, Acting Director of the Hydropower Licensing Division.

I am pleased as usual to come before this committee. You all have my prepared statement which I would like to submit to you for the record. May I ask whether or not you wish me to read the entire statement or would you wish to have me summarize it? I will do whichever you prefer.

Senator MURKOWSKI. I think if you could summarize it, it would be sufficient.

Commissioner SHELDON. I would like to address some of the issues which were raised in New Hampshire and in Alaska this summer, and also some which were raised in the Washington meeting on October 19. I would like to point out as of the end of fiscal year 1981, active proposals before the FERC were estimated to have a total capacity of 23.5 million kilowatts or the equivalent of 25 nuclear powerplants. If these proposals were all approved, which of course they probably will not be, but if they were, over \$25 billion will be spent and over 500,000 jobs will be supported in the national economy. I think that both of those figures are significant.

Recently we have had some challenges to hydroelectric development which has caused a great deal of confusion and frustration within the industry, some about which we have heard and others you may have not heard, but I would like to stress that if there is anything essential for the development of hydroelectric power, it must be a confidence and consistency in the system. Right now we are faced with many challenges which really jeopardize both of those terms.

The hydroelectric permit and licensing process which we inherited from the Federal Power Commission in 1977 I must say was cumbersome and difficult. In the years since we have taken administrative actions to reform our regulations. I would like to point out some of the impacts of our regulatory reform, which I might add is now finished except for our two rulemakings on fees. These are now consolidated into one, which will come before the Commission hopefully by the middle of April. Preliminary permit processing time has been reduced from 18 months to 5 months. Exemptions are now granted automatically, generic exemptions in 30 days, conduit exemptions in 90 days, and case-by-case exemptions in 120 days. Originally the Commission intended to have the case-by-case determinations in 90 days, but in deference to other agencies we have changed that to 120.

Due to short-form licensing, the time required to license small projects has been reduced from 15 months to 7 months. Licensing time for larger projects that utilize an existing dam has been reduced from 24 months to 12 months. The Commission now licenses projects which require new construction of a dam and impoundment within 24 months. Previously this had taken 3 years or more. Hopefully with some of our new regulations it will be further reduced.

Are we adequately addressing dam safety considerations and environmental concerns with all of these changes in our regulations? We feel very strongly the answer is yes. We have in the past, we are now, and we will continue to do so in the future.

Then we are asked many times are we ready for the flood of license applications which we will get from the permit applications? We are as ready as we can be under the existing statutes and inter-governmental relationships, but there are still areas in which we could really use the help of the Senate. You are all aware of several proposals for further change. One of them is Senate bill 1299 to waive the licensing provisions of the Federal Power Act for projects with an installed capacity of 15 megawatts or less. This is an administration proposal which this Commission supports.

Then several parties in your previous hearings have suggested that the FERC be given the lead agency status in relation to other agencies and to increase State involvement in the licensing process. I would like to address both of those issues.

What is meant by giving the FERC the lead agency status? Well, before the Federal Power Act was enacted, Federal control over hydroelectric power was divided among three Departments—War, Interior, and Agriculture. The inefficiency and confusion resulting from this overlapping authority was a major reason for the Federal Power Act. The act clearly indicates congressional intent to promote a uniform plan to develop public water resources and to eliminate divided jurisdiction over water development by consolidating all licensing authority in the Federal Power Commission, the predecessor of the FERC.

Nevertheless, today the Commission still has to contend with other Federal agencies that have or are alleged to have dual permitting authority over hydroelectric development. The appearance of dual authority leads to claims by these agencies that they essentially have veto power over our licensing authority. State and Federal agencies obviously have a legitimate and an important role to play in advising us of their special areas of responsibility and expertise. However, the Commission believes strongly that Congress gave the FERC the ultimate authority to license hydropower facilities, balancing all of the elements of the public interest. This approach to us makes just as much sense today as it did in 1920.

However, over the last 60 years since the Federal Power Act was enacted, at least eighteen different Federal statutes have been passed which affect non-Federal development of hydroelectric projects. In some cases, there are as many as 30 different Federal, State, and local agencies that have input into the decision process to issue a license. On the Federal level, the important agencies you all know. There are nine of them. I will not delineate them now. They are in my testimony, but all nine of these agencies have the ability to affect substantially the processing time for issuing a license. The same is true of the State agencies as well as our local ones.

As a result of these many statutes, there has been overlapping and conflicting authority. This has eroded the central concept of the Federal Power Act to vest all Federal licensing authority primarily in one central agency. Now let me address for a moment the problems which the FERC has with other Federal agencies and later turn to the role of the State and local agencies.

As I mentioned earlier, the statutory scheme of the Federal Power Act confers upon the Commission a central coordinating role in authorizing the use of public resources, not only water resources,

but public lands as well. The Commission acknowledges that in performing this role there are multiple interests and related statutory requirements which affect any decision to license a project. The Commission must, for example, consult the fish and wildlife agencies to ascertain the probable effects a licensed project may have on the environment. The decision on how best to protect environmental features is nevertheless the Commission's decision. When it licenses the projects, it subjects them to terms and conditions based on the expert advice of various resource agencies. Unfortunately, the Commission's job is not always so simple. Repeated delays and time-consuming litigation have occurred in recent years because, the Federal Power Act notwithstanding, other Federal agencies have argued that certain Federal authorizations necessary for construction, operation, and maintenance of non-Federal hydropower developments must be reserved to and exercised by these agencies independent of the Commission's authority to license.

On several occasions we have seen that for legal or practical reasons, these claims of authority have been tantamount to a veto power over a licensed project. Such claims have arisen with respect to the Department of Interior's development of terms and conditions to protect Indian reservation lands and the Bureau of Land Management's grant of rights-of-way. It was, after all, the underlying purpose of the act to eliminate piecemeal Federal authorization of waterpower projects, but we are confronted with agencies' regulations, such as those promulgated under the Fish and Wildlife Coordination Act and the Historic Preservation Act by branches of the Department of Interior, which purport to review the Commission's decisions and to bind its actions.

Even where there exists clear authority by statute for other agencies to impose terms and conditions on Commission actions, as is the case only with respect to exemptions from licensing—section 30(c) of the Federal Power Act—the Commission may find itself unable to exercise its authority without making hydropower development impractical because of proposals of other agencies.

Efficient and expeditious consideration of proposed plans for waterpower development requires the cooperation of us all, and here I might suggest that we have had some considerable success with memorandums of understanding with both the Bureau of Reclamation and the Army Corps of Engineers in dealing with non-Federal hydropower development at Federal dam sites. We have had excellent cooperation from the Undersecretary of the Interior, the Assistant Secretary of the Army for Civil Works, and the Commissioner of Reclamation.

Any such agreements, however, are meaningless unless the agencies' regional and local offices, which normally implement agency policy, are made accountable. Although this is a separate problem, I felt I should bring it up. I might add that we are in no better position as the Federal Energy Regulatory Commission. We at times have problems getting our policies out into the field as well. We all do, but at least we are trying to correct that problem.

The problem of interagency conflicts is not new. Last spring when I testified before Congressman Tom Bevill, chairman of the House Appropriations Subcommittee on Energy and Water Development, he requested my recommendations on ways to improve the

licensing process. In response to his request, I proposed as a Commissioner, not as a Commission recommendation, but as a Commissioner, that the FERC be made responsible for all Federal licensing decisions and likewise be held accountable for all delays in the Federal licensing process. No legislation to date has been introduced.

A less dramatic step, however, is at least to require strict compliance with the reasonable deadlines for project review and comment set forth in our regulations. If an agency is to miss a deadline, the Commission should be entitled to regard this as no comment and proceed with its action. This would be done with the understanding that further agency participation would be foreclosed with the possible exception of a formal intervention.

We need your support with respect to the promotion of Federal interagency cooperation. Every month's delay in licensing a project increases the cost of that project by 1 percent, assuming a 12-percent inflation rate. If 18 percent interest is being paid on the development money, the monthly increase is 2.5 percent. These costs are unnecessary, they inhibit development, and they are eventually passed on to the consumer.

To control the cost of regulatory delay, all Federal agencies must be made more responsive to reasonable license review deadlines than they have been in the past.

As far as the State responsibility is concerned, we have a similar type of overlapping there. I believe that the States need the same lead agency concept as we have suggested for the Federal agencies, for the same reason. Strict compliance with the Commission's deadlines should be required, and failure to comment should be construed as acquiescence to Commission action.

In a related subject, several speakers before this subcommittee have submitted proposals to increase State involvement in the licensing process and to delegate licensing to the States. There has been some implication that the States are not involved in the licensing process.

I disagree. They are involved, as is demonstrated by the list of State agencies cited earlier and the problems just mentioned. Even at the preliminary permit stage, our regulations require all pertinent State agencies, of which there are many, to have been consulted in the formulation of the project before an applicant can even submit his application. We do not accept or process a license application unless these consultations have taken place and are documented. The States themselves have the same problem we have—too many agencies with too many voices and too few staff in the State approval process. In some States, a developer is required to obtain on the average State and local permits equivalent to five times the number of Federal permits required.

For expeditious Federal and State review, the States themselves need to use the lead agency concept. Where there has been State coordination such as with the Massachusetts Governor's Energy Council in the Lawrence project on the Merrimack River, we estimate the license process time was cut in half. Both Massachusetts and Maine have enacted legislation to provide this coordination. I commend both States for their important efforts in expediting this matter.

Should the States take over the licensing of hydroelectric projects? Frankly, from what I know about the States' resources and what I know about their performance, and this is purely a subjective assessment, very few have the final financial resources at the present time to take on this function. I do not see where in the Federal budget at this time we have money to give to the States for such a process.

In any case, I believe that there would be duplication if such were done. We have the expertise. If we move it to the States, there would somehow I think still be a balancing act between the two, since we are required in interstate commerce to take care of that part of the function, and I don't know how we would get around that with all States individually taking care of the process.

I believe that we involve the States now in a reasonable manner, and I hope we can continue in the same kind of cooperation we have had. I would suggest that the States, and other States, follow the lead of Massachusetts and Maine in helping us to telescope our process.

I will be happy to try and answer, sir, any questions you may have.

[The prepared statement of Commissioner Sheldon follows:]

TESTIMONY BEFORE THE
SUBCOMMITTEE ON ENERGY REGULATION AND
SUBCOMMITTEE ON WATER AND POWER
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

BY

GEORGIANA H. SHELDON
VICE CHAIRMAN

FEDERAL ENERGY REGULATORY COMMISSION

HYDROELECTRIC DEVELOPMENT AND LICENSING PROCEDURES

FEBRUARY 24, 1982

GOOD AFTERNOON. I AM PLEASED, AS ALWAYS, TO HAVE THE OPPORTUNITY TO TESTIFY BEFORE THIS COMMITTEE. IN DISCUSSING HYDROELECTRIC DEVELOPMENT AND LICENSING PROCEDURES, I WILL ADDRESS SOME OF THE ISSUES DISCUSSED DURING FIELD HEARINGS HELD IN NEW HAMPSHIRE AND ALASKA THIS SUMMER AND DURING THE OCTOBER 19 HEARINGS HERE IN WASHINGTON. TIME DOES NOT PERMIT ADDRESSING ALL OF THE ISSUES, THEREFORE I AM PREPARED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

HYDROPOWER POTENTIAL AND THE ECONOMIC ENVIRONMENT

WHERE DOES HYDROELECTRIC POWER FIT INTO THE NATION'S ENERGY PICTURE?

- ° TODAY, HYDROPOWER SUPPLIES 13 PERCENT OF THE ELECTRIC ENERGY IN THE UNITED STATES.

- 2 -

- ° CONVENTIONAL HYDROELECTRIC PROJECTS GENERATE ABOUT 286 BILLION KW-HOURS OF ELECTRICITY ANNUALLY, SAVING THE EQUIVALENT OF 490 MILLION BARRELS OF OIL OR 132 MILLION TONS OF COAL.
- ° THERE IS SIGNIFICANT POTENTIAL FOR FURTHER DEVELOPMENT. THE ENERGY AVAILABLE FROM ALL POTENTIAL SITES IS APPROXIMATELY 401 BILLION KW-HOURS OF ELECTRICITY ANNUALLY, EQUIVALENT TO 658 MILLION BARRELS OF OIL OR 186 MILLION TONS OF COAL.
- ° AS OF THE END OF FY 1981, ACTIVE PROPOSALS BEFORE THE FERC WERE ESTIMATED TO HAVE A TOTAL CAPACITY OF 23.5 MILLION KW, OR THE EQUIVALENT OF 25 NUCLEAR POWER PLANTS. IF THESE PROPOSALS ARE ALL APPROVED, OVER \$25 BILLION WILL BE SPENT AND OVER 500,000 JOBS WILL BE SUPPORTED IN THE NATIONAL ECONOMY.

- 3 -

OUTSIDE FORCES SUCH AS THE LATEST EVENTS IN THE MIDDLE EAST AND THE ONGOING DEBATE ABOUT NUCLEAR POWER MAKE A NATIONAL EFFORT TO DEVELOP DOMESTIC, RENEWABLE RESOURCES A TOP PRIORITY.

INTERNAL DEVELOPMENTS ALSO COMPEL RENEWED INTEREST IN HYDROPOWER. AS YOU KNOW, THE GOVERNMENT HAS PROVIDED SEVERAL INDUCEMENTS TO HYDROPOWER EXPANSION IN RECENT YEARS: LOANS FOR FEASIBILITY STUDIES, ENERGY TAX CREDITS, AND THE GUARANTEED MARKET FOR POWER GENERATED BY FACILITIES THAT QUALIFY UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978.

THERE HAVE BEEN CHALLENGES TO EACH OF THESE INDUCEMENTS: THE DEPARTMENT OF ENERGY SUSPENDED FEASIBILITY LOANS IN FEBRUARY, 1981. THE ADMINISTRATION HAS PROPOSED REMOVING THE ENERGY TAX CREDITS. THE COMMISSION'S RULES REGARDING INTERCONNECTIONS WITH UTILITIES AND AVOIDED COST PRICING UNDER PURPA HAVE BEEN OVERTURNED BY A RECENT DECISION OF THE UNITED STATES COURT OF APPEALS.

THESE CHALLENGES HAVE CREATED CONFUSION AND FRUSTRATION IN THE INDUSTRY, SOME OF WHICH YOU HAVE HEARD IN PREVIOUS TESTIMONY. CONSISTENCY AND CONFIDENCE ARE ESSENTIAL FOR GROWTH.

THE REGULATORY ENVIRONMENT OF HYDROPOWER DEVELOPMENT

I'D LIKE TO THANK THE STATE AND INDUSTRY OFFICIALS WHO TESTIFIED PREVIOUSLY AND WHO COMPLIMENTED THE STAFF OF THE FERC FOR THE YEOMAN'S JOB OUR STAFF HAS DONE UNDER THE INCREASING VOLUME OF PERMIT APPLICATIONS RECEIVED IN THE LAST THREE YEARS. I THINK WE'VE ACCOMPLISHED A GREAT DEAL. THE HYDROELECTRIC PERMIT AND LICENSING PROCESSES INHERITED FROM THE FEDERAL POWER COMMISSION IN 1977 WERE INCREDIBLY CUMBERSOME. THE REGULATIONS WERE AMBIGUOUS AND OTHERWISE INADEQUATE. THREE YEARS AGO, WE BEGAN TO OVERHAUL THE COMMISSION'S PROCESSES:

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- ° A SERIES OF COMMISSION ACTIONS BETWEEN APRIL, 1978 AND OCTOBER, 1979 DELEGATED LIMITED AUTHORITY TO THE STAFF TO ACT ON CERTAIN LICENSE AND PERMIT APPLICATIONS, SIGNIFICANTLY REDUCING INTERNAL PROCESSING TIME.
- ° "SHORT-FORM," SIMPLIFIED LICENSING PROCEDURES FOR PROJECTS WITH AN INSTALLED CAPACITY OF 1.5 kW OR LESS WERE ISSUED IN SEPTEMBER, 1978. (ORDER NO. 11)
- ° CLEAR AND SIMPLIFIED LICENSE AND PERMIT APPLICATION PROCEDURES WERE ISSUED IN OCTOBER, 1979. (ORDER NO. 54)
THE LICENSE APPLICATION REQUIREMENTS FOR MAJOR PROJECTS AT EXISTING DAMS WERE ALSO REVISED AT THAT TIME.
(ORDER NO. 59)
- ° REGULATIONS FOR THE EXEMPTION OF SMALL CONDUIT HYDRO-ELECTRIC FACILITIES WERE ISSUED IN APRIL, 1980 UNDER SECTION 30 OF THE FEDERAL POWER ACT. (ORDER NO. 76)

° UNDER THE ENERGY SECURITY ACT OF 1980, THE COMMISSION IMPLEMENTED, IN ONLY MONTHS, A PROGRAM OF EXEMPTIONS FROM PROVISIONS OF THE FEDERAL POWER ACT FOR PROJECTS UNDER 5 MW. (ORDER NO. 106)

° THE COMMISSION UNDERTOOK A COMPLETE REEXAMINATION AND REVISION OF ITS DAM SAFETY REGULATIONS TO PROTECT LIFE, HEALTH, AND PROPERTY. THIS WAS COMPLETED IN JANUARY, 1981. (ORDER NO. 122)

LAST YEAR, THIS THREE-YEAR PROGRAM OF REGULATORY REFORM CULMINATED WITH COMMISSION CONSIDERATION OF ADDITIONAL MEASURES:

° THE BENEFITS OF THE "SHORT-FORM" LICENSING PROCEDURES WERE EXTENDED TO ALL PROJECTS HAVING A CAPACITY OF 5MW OR LESS.

° THE PERMIT AND LICENSE REGULATIONS WERE CLARIFIED AND STREAMLINED. FOR EXAMPLE, PREVIOUSLY TROUBLESOME PROCEDURES WERE ELIMINATED AND AUTOMATIC INTERVENTIONS WERE GRANTED IN CERTAIN CASES.

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- ° REGULATIONS GOVERNING APPLICATIONS FOR MAJOR UNCONSTRUCTED PROJECTS, MAJOR MODIFIED PROJECTS, TRANSMISSION LINES, AND AMENDMENTS TO LICENSES WERE COMPLETELY REVISED TO SIMPLIFY AND CLARIFY THE FERC REQUIREMENTS, REDUCE SUBJECTIVE INTERPRETATION OF THE REGULATIONS, AVOID RESORT TO DEFICIENCY LETTERS, AND OTHERWISE HELP EXPEDITE THE LICENSING PROCESS.
- ° TWO DEFINED CATEGORIES OF SMALL HYDROELECTRIC POWER PROJECTS WERE EXEMPTED FROM THE LICENSING REQUIREMENTS OF THE FEDERAL POWER ACT, PURSUANT ONLY TO A BRIEF FILING BY THE OWNER OF A QUALIFIED PROJECT.

ALL OF THESE REGULATORY CHANGES HAVE BEEN ACCOMPLISHED WITHOUT SACRIFICING THE COMMISSION'S RESPONSIBILITIES TO THE PUBLIC SAFETY OR THE ENVIRONMENT.

ANOTHER MANAGEMENT INITIATIVE PRESENTLY BEING CONSIDERED IS A REORGANIZATION TO ELEVATE HYDROPOWER LICENSING TO FULL OFFICE LEVEL IN THE COMMISSION.

THE ADMINISTRATIVE IMPACTS OF THIS PROGRAM OF REGULATORY REFORM HAVE BEEN SUBSTANTIAL:

- ° PRELIMINARY PERMIT PROCESSING TIME HAS BEEN REDUCED FROM 18 MONTHS TO 5 MONTHS.
- ° EXEMPTIONS ARE NOW GRANTED AUTOMATICALLY IN 30 TO 120 DAYS.
- ° DUE TO SHORT-FORM LICENSING, THE TIME REQUIRED TO LICENSE SMALL PROJECTS HAS BEEN REDUCED FROM 15 MONTHS TO 7 MONTHS.
- ° LICENSING TIME FOR LARGER PROJECTS THAT UTILIZE AN EXISTING DAM HAS BEEN REDUCED FROM 24 MONTHS TO 12 MONTHS.

- ° THE COMMISSION NOW LICENSES PROJECTS WHICH REQUIRE THE NEW CONSTRUCTION OF A DAM AND IMPOUNDMENT IN ABOUT 24 MONTHS. PREVIOUSLY THESE LICENSES REQUIRED THREE YEARS OR MORE. THE NEW REGULATIONS WILL REDUCE THAT TIME FURTHER.

THESE REDUCTIONS HAVE ALL OCCURRED IN TANDEM WITH AN EVER INCREASING WORKLOAD, WHILE THE SIZE OF THE STAFF HAS REMAINED ESSENTIALLY UNCHANGED. THE NUMBERS SPEAK FOR THEMSELVES:

- ° AS OF THE END OF FY 1981, FOR NON-FEDERAL DEVELOPMENT OF FEDERAL DAMS, THERE WERE 191 PROJECTS WITH ISSUED PRELIMINARY PERMITS AND 331 APPLICATIONS PENDING BEFORE THE COMMISSION.
- ° PRELIMINARY PERMIT APPLICATIONS FOR ALL PROJECTS JUMPED FROM 76 IN FY 1979 TO 1,859 IN FY 1981.

- ° In FY 1981, 1,254 PRELIMINARY PERMIT APPLICATIONS WERE PROCESSED, AS OPPOSED TO 38 IN FY 1979.
- ° TOTAL HYDROELECTRIC ACTIONS (INCLUDING APPLICATIONS FOR PERMIT, LICENSE, SURRENDER, TRANSFER, AND OTHER AUTHORIZATION) BROUGHT BEFORE THE COMMISSION IN FY 1981 WERE 2,296. THERE WERE 276 IN FY 1979.
- ° TOTAL SUCH HYDROELECTRIC ACTIONS PROCESSED IN FY 1981 WERE 1,636 AS OPPOSED TO 290 IN FY 1979.

THE TOTAL NUMBER OF ALL SUCH ACTIONS, BOTH FILED AND PENDING, HAS BEEN INCREASING THROUGHOUT THE LAST THREE YEARS. WE HAVE STARTED TO SEE A LEVELING OFF AND A GENERAL DOWNWARD TREND IN THE TOTAL NUMBER OF ACTIONS PENDING, IN SPITE OF A CONTINUED INCREASE IN APPLICATIONS FILED. I AM PLEASED TO SEE THESE RESULTS OF THE THREE-YEAR IMPROVEMENT PROGRAM.

ARE WE ADEQUATELY ADDRESSING DAM SAFETY AND ENVIRONMENTAL CONCERNS? WE FEEL VERY STRONGLY THE ANSWER IS YES. WE HAVE IN THE PAST, WE ARE NOW, AND WE WILL IN THE FUTURE.

ARE WE READY FOR THE FLOOD OF LICENSE APPLICATIONS WHICH FOLLOW THE FLOOD OF PERMIT APPLICATIONS? WE ARE AS READY AS WE CAN BE UNDER EXISTING STATUTES AND INTRA-GOVERNMENTAL RELATIONSHIPS, BUT THERE ARE STILL AREAS IN WHICH WE COULD REALLY USE YOUR HELP. YOU ARE ALL AWARE OF SEVERAL PROPOSALS FOR FURTHER CHANGE. ONE OF THEM, S-1299, IS TO WAIVE THE LICENSING PROVISIONS OF THE FEDERAL POWER ACT FOR PROJECTS WITH AN INSTALLED CAPACITY OF 15 MW OR LESS. THIS IS AN ADMINISTRATION PROPOSAL WHICH THE COMMISSION SUPPORTS. SEVERAL PARTIES HAVE ALSO PROPOSED TO GIVE THE FERC "LEAD AGENCY" STATUS IN RELATION TO OTHER AGENCIES AND TO INCREASE STATE INVOLVEMENT IN THE LICENSING PROCESS. I'D LIKE TO ADDRESS THE REMAINDER OF MY PREPARED REMARKS TO THESE TWO PROPOSALS.

FERC As "LEAD AGENCY"

WHAT DO I MEAN BY GIVING THE FERC "LEAD AGENCY" STATUS?

BEFORE THE FEDERAL POWER ACT WAS ENACTED, FEDERAL CONTROL OVER HYDROELECTRIC POWER WAS DIVIDED AMONG THE DEPARTMENTS OF WAR, INTERIOR, AND AGRICULTURE. THE INEFFICIENCY AND CONFUSION RESULTING FROM THIS OVERLAPPING AUTHORITY WERE A MAJOR REASON FOR THE POWER ACT. THE ACT CLEARLY INDICATES CONGRESSIONAL INTENT TO PROMOTE A UNIFORM PLAN TO DEVELOP PUBLIC WATER RESOURCES AND TO ELIMINATE DIVIDED JURISDICTION OVER WATER POWER DEVELOPMENT BY CONSOLIDATING ALL LICENSING AUTHORITY IN THE FEDERAL POWER COMMISSION, THE PREDECESSOR OF THE FERC.

NEVERTHELESS, TODAY THE COMMISSION STILL HAS TO CONTEND WITH OTHER FEDERAL AGENCIES THAT HAVE OR ALLEGE TO HAVE DUAL PERMITTING AUTHORITY OVER HYDROPOWER DEVELOPMENT. THE APPEARANCE OF DUAL AUTHORITY LEADS TO CLAIMS BY THESE AGENCIES THAT THEY

HAVE VETO POWER OVER OUR LICENSING AUTHORITY. STATE AND FEDERAL AGENCIES OBVIOUSLY HAVE A LEGITIMATE AND IMPORTANT ROLE TO PLAY IN ADVISING US OF THEIR SPECIAL AREAS OF RESPONSIBILITY AND EXPERTISE. HOWEVER, WE BELIEVE STRONGLY THAT CONGRESS GAVE THE FERC THE ULTIMATE AUTHORITY TO LICENSE HYDROPOWER FACILITIES, BALANCING ALL THE ELEMENTS OF THE PUBLIC INTEREST. THIS APPROACH MAKES JUST AS MUCH SENSE TODAY AS IT DID IN 1920.

OVER THE SIXTY YEARS SINCE THE FEDERAL POWER ACT WAS ENACTED, AT LEAST EIGHTEEN DIFFERENT FEDERAL STATUTES HAVE BEEN PASSED WHICH AFFECT THE NON-FEDERAL DEVELOPMENT OF HYDROELECTRIC PROJECTS. THESE STATUTES, MOST OF RECENT VINTAGE, INCLUDE:

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969
FEDERAL WATER POLLUTION CONTROL ACT (CLEAN WATER ACT)
FISH AND WILDLIFE COORDINATION ACT
NATIONAL HISTORIC PRESERVATION ACT
WATER RESOURCES PLANNING ACT
ARCHAEOLOGICAL AND HISTORIC PRESERVATION ACT
NATIONAL FOREST MULTIPLE USE ACT
WILD AND SCENIC RIVERS ACT
PUBLIC UTILITIES REGULATORY POLICY ACT OF 1978
ENERGY SECURITY ACT OF 1980
PACIFIC NORTHWEST ELECTRIC POWER PLANNING
AND CONSERVATION ACT
ANADROMOUS FISH CONSERVATION ACT
WILDERNESS ACT
NATIONAL TRAILS SYSTEM ACT
BUREAU OF OUTDOOR RECREATION ORGANIC ACT
COASTAL ZONE MANAGEMENT ACT
ENDANGERED SPECIES ACT
FEDERAL LAND POLICY AND MANAGEMENT ACT

IN SOME CASES, AS MANY AS THIRTY DIFFERENT FEDERAL, STATE,
AND LOCAL AGENCIES HAVE INPUT INTO THE DECISION PROCESS TO ISSUE
A LICENSE. ON THE FEDERAL LEVEL, THE FOLLOWING AGENCIES ARE
FREQUENTLY INVOLVED IN HYDROPOWER LICENSE PROCEEDINGS:

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DEPARTMENT OF THE INTERIOR

- *FISH AND WILDLIFE SERVICE
- *BUREAU OF RECLAMATION
- *NATIONAL PARK SERVICE
- *BUREAU OF LAND MANAGEMENT

DEPARTMENT OF AGRICULTURE

- *FOREST SERVICE
- SOIL CONSERVATION SERVICE
- RURAL ELECTRIFICATION ADMINISTRATION

*ARMY CORPS OF ENGINEERS

*RIVER BASIN COMMISSION(S)

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF TRANSPORTATION

COAST GUARD

*ADVISORY COUNCIL ON HISTORIC PRESERVATION

FEDERAL EMERGENCY MANAGEMENT AGENCY

DEPARTMENT OF ENERGY

DEPARTMENT OF COMMERCE

- *NATIONAL MARINE FISHERIES SERVICE

NINE OF THESE FEDERAL AGENCIES, MARKED BY ASTERISKS IN THE WRITTEN TESTIMONY, HAVE THE ABILITY TO AFFECT SUBSTANTIALLY THE PROCESSING TIME FOR ISSUING A LICENSE.

ON THE STATE LEVEL, THE MOST COMMONLY INVOLVED AGENCIES
INCLUDE:

OFFICE OF THE GOVERNOR
PUBLIC SERVICE COMMISSION
ATTORNEY GENERAL
CONSERVATION COMMISSION
GEOLOGICAL SURVEY
*RECREATION COMMISSION OR DEPARTMENT
*ENVIRONMENTAL QUALITY AGENCY
DEPARTMENT OF ECONOMIC PLANNING
LAND USE COMMISSION
DIVISION OF FORESTRY
*FISH AND GAME DEPARTMENT
DEPARTMENT OF AGRICULTURE
BOARD OF LAND COMMISSIONERS
WETLANDS MANAGEMENT AGENCY
*HISTORIC PRESERVATION AGENCY

FOUR OF THESE STATE AGENCIES, AGAIN MARKED BY ASTERISKS IN
THE WRITTEN TESTIMONY, HAVE THE ABILITY TO AFFECT SUBSTANTIALLY
THE PROCESSING TIME FOR ISSUING A LICENSE.

AT THE LOCAL LEVEL, ADDITIONAL AGENCIES MAY AFFECT PROJECT
DEVELOPMENT, SUCH AS:

BOARD OF COUNTY COMMISSIONERS
NEARBY TOWNS AND CITIES

AS A RESULT OF THE MANY STATUTES, THERE HAS BEEN OVERLAPPING AND CONFLICTING AUTHORITY, SCATTERED OVER THESE MANY AGENCIES, IN ADDITION TO THAT WHICH RESIDES IN THE FERC. THIS HAS ERODED A CENTRAL PRECEPT OF THE FEDERAL POWER ACT -- TO VEST ALL FEDERAL LICENSING AUTHORITY PRIMARILY IN ONE CENTRAL AGENCY.

LET ME NOW ADDRESS THE PROBLEMS WHICH THE FERC HAS WITH OTHER FEDERAL AGENCIES AND LATER TURN TO THE ROLE OF STATE AND LOCAL AGENCIES.

AS I MENTIONED EARLIER, THE STATUTORY SCHEME OF THE FEDERAL POWER ACT CONFERS UPON THE COMMISSION A CENTRAL, COORDINATING ROLE IN AUTHORIZING THE USE OF PUBLIC RESOURCES, NOT ONLY WATER RESOURCES, BUT PUBLIC LANDS AS WELL. THE COMMISSION ACKNOWLEDGES THAT, IN PERFORMING THIS ROLE, THERE ARE MULTIPLE INTERESTS AND RELATED STATUTORY REQUIREMENTS WHICH AFFECT ANY DECISION TO LICENSE A PROJECT. THE COMMISSION MUST, FOR EXAMPLE, CONSULT WITH FISH AND WILDLIFE AGENCIES

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TO ASCERTAIN THE PROBABLE EFFECTS A LICENSED PROJECT MAY HAVE ON THE ENVIRONMENT. THE DECISION ON HOW BEST TO PROTECT ENVIRONMENTAL FEATURES IS, NEVERTHELESS, THE COMMISSION'S DECISION; WHEN IT LICENSES PROJECTS, IT SUBJECTS THEM TO TERMS AND CONDITIONS BASED ON THE EXPERT ADVICE OF VARIOUS RESOURCE AGENCIES. UNFORTUNATELY, THE COMMISSION'S JOB IS NOT ALWAYS SO SIMPLE.

REPEATED DELAYS AND TIME-CONSUMING LITIGATION HAVE OCCURRED IN RECENT YEARS BECAUSE, THE FEDERAL POWER ACT NOTWITHSTANDING, OTHER FEDERAL AGENCIES HAVE ARGUED THAT CERTAIN FEDERAL AUTHORIZATIONS NECESSARY FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF NON-FEDERAL HYDROPOWER DEVELOPMENTS MUST BE RESERVED TO, AND EXERCISED BY, THOSE AGENCIES -- INDEPENDENTLY OF THE COMMISSION'S AUTHORITY TO LICENSE.

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ON SEVERAL OCCASIONS WE HAVE SEEN THAT, FOR LEGAL OR PRACTICAL REASONS, THESE CLAIMS OF AUTHORITY HAVE BEEN TANTAMOUNT TO A CLAIM OF VETO POWER OVER A LICENSED PROJECT.

SUCH PROBLEMS HAVE ARISEN WITH RESPECT TO THE DEPARTMENT OF INTERIOR'S DEVELOPMENT OF TERMS AND CONDITIONS TO PROTECT INDIAN RESERVATION LANDS AND THE AUTHORITY CLAIMED BY INTERIOR'S BUREAU OF LAND MANAGEMENT TO GRANT RIGHTS-OF-WAY UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT. THE COMMISSION HAS MAINTAINED CONSISTENTLY THAT A LICENSE IS THE ONLY AUTHORIZATION REQUIRED FOR A NON-FEDERAL APPLICANT TO USE PUBLIC LANDS AND WATERS; IT WAS, AFTER ALL, THE UNDERLYING PURPOSE OF THE ACT TO ELIMINATE PIECEMEAL FEDERAL AUTHORIZATION OF WATER POWER PROJECTS. WE ARE NEVERTHELESS CONFRONTED WITH AGENCY REGULATIONS, SUCH AS THOSE PROMULGATED UNDER THE FISH AND WILDLIFE COORDINATION ACT AND THE HISTORIC PRESERVATION

ACT BY BRANCHES OF THE DEPARTMENT OF INTERIOR, WHICH PURPORT TO REVIEW THE COMMISSION'S DECISIONS AND TO BIND ITS ACTIONS. EVEN WHERE THERE EXISTS CLEAR STATUTORY AUTHORITY FOR OTHER AGENCIES TO IMPOSE TERMS AND CONDITIONS ON COMMISSION ACTIONS, AS IS THE CASE ONLY WITH RESPECT TO EXEMPTIONS FROM LICENSING (SECTION 30(c) OF THE FEDERAL POWER ACT), THE COMMISSION MAY FIND ITSELF UNABLE TO EXERCISE ITS AUTHORITY WITHOUT MAKING HYDROPOWER DEVELOPMENT IMPRACTICAL BECAUSE OF THE PROPOSALS OF OTHER AGENCIES.

EFFICIENT AND EXPEDITIOUS CONSIDERATION OF PROPOSED PLANS FOR WATERPOWER DEVELOPMENT REQUIRES THE COOPERATION OF OTHER AGENCIES. WE HAVE MEMORANDUMS OF UNDERSTANDING WITH BOTH THE BUREAU OF RECLAMATION AND THE ARMY CORPS OF ENGINEERS, DEALING WITH NON-FEDERAL HYDROPOWER DEVELOPMENT

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AT FEDERAL DAM SITES. ANY SUCH AGREEMENTS ARE MEANINGLESS, HOWEVER, UNLESS THE AGENCIES' REGIONAL AND LOCAL OFFICES, WHICH NORMALLY IMPLEMENT AGENCY POLICIES, ARE MADE ACCOUNTABLE TO WASHINGTON. ALTHOUGH THIS IS A SEPARATE PROBLEM, I FELT IT IMPORTANT TO MENTION HERE.

THE PROBLEM OF INTERAGENCY CONFLICT IS NOT NEW. LAST SPRING, CONGRESSMAN TOM BEVILL, CHAIRMAN OF THE HOUSE APPROPRIATIONS SUBCOMMITTEE ON ENERGY AND WATER DEVELOPMENT, REQUESTED MY RECOMMENDATIONS ON WAYS TO IMPROVE THE LICENSING PROCESS. IN RESPONSE TO HIS REQUEST, I PROPOSED THAT THE FERC BE MADE RESPONSIBLE FOR ALL FEDERAL LICENSING DECISIONS AND HELD ACCOUNTABLE FOR ALL DELAYS IN THE FEDERAL LICENSING PROCESS. NO LEGISLATION TO IMPLEMENT THESE RECOMMENDATIONS HAS BEEN INTRODUCED IN CONGRESS.

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A LESS DRASTIC STEP IS AT LEAST TO REQUIRE STRICT COMPLIANCE WITH THE REASONABLE DEADLINES FOR PROJECT REVIEW AND COMMENT SET FORTH IN FERC REGULATIONS. IF AN AGENCY WERE TO MISS A DEADLINE, THE COMMISSION SHOULD BE ENTITLED TO REGARD THIS AS "NO COMMENT" AND TO PROCEED WITH ITS ACTION. THIS WOULD BE DONE WITH THE UNDERSTANDING THAT FURTHER AGENCY PARTICIPATION WOULD BE FORECLOSED, WITH THE POSSIBLE EXCEPTION OF FORMAL INTERVENTION.

WE NEED YOUR SUPPORT WITH RESPECT TO THE PROMOTION OF FEDERAL INTERAGENCY COOPERATION. EVERY MONTH'S DELAY IN THE LICENSING OF A PROJECT INCREASES THE COST OF THAT PROJECT BY 1 PERCENT, ASSUMING A MODEST 12-PERCENT INFLATION. IF 18-PERCENT INTEREST IS BEING PAID ON THE DEVELOPMENT MONEY, THE MONTHLY COST INCREASE IS 2.5 PERCENT! THESE ARE UNNECESSARY COSTS WHICH INHIBIT DEVELOPERS, AND THESE COSTS ARE EVENTUALLY PASSED ON TO CONSUMERS. TO CONTROL THE COST OF REGULATORY DELAY, ALL FEDERAL AGENCIES MUST BE MADE MORE RESPONSIVE TO REASONABLE LICENSE-REVIEW DEADLINES THAN THEY HAVE BEEN IN THE PAST.

STATE HYDROPOWER RESPONSIBILITIES

THE OVERLAP OF REGULATORY RESPONSIBILITIES WHICH PERSISTS WITH FEDERAL AGENCIES CHALLENGING FERC AUTHORITY UNDER THE FEDERAL POWER ACT OR OTHER FEDERAL STATUTES ALSO EXISTS WITH STATE AGENCIES. FOR EXAMPLE:

1. THE NEW HAMPSHIRE PUBLIC UTILITY COMMISSION WOULD LIKE TO LIMIT THE SALE OF HYDROELECTRIC POWER GENERATED WITHIN THE STATE TO CUSTOMERS WITHIN THE STATE, DRAWING ON A 1913 STATE STATUTE GIVING THEM THE AUTHORITY TO DO SO. UNDER THE FEDERAL POWER ACT, THE FERC REGULATES THE INTERSTATE TRANSMISSION OF ELECTRIC POWER. THE ISSUE OF JURISDICTION IS PENDING BEFORE THE SUPREME COURT IN NEW ENGLAND POWER COMPANY, ET-AL. V. NEW HAMPSHIRE PUBLIC UTILITY COMMISSION.

2. UNDER DELEGATION FROM THE U.S. ENVIRONMENTAL PROTECTION AGENCY, STATES SET CONDITIONS ON WATER QUALITY UNDER SECTION 401 OF THE FEDERAL WATER POLLUTION CONTROL ACT. THE CONDITIONS SET MAY BE SO STRINGENT THAT THEY ARE IMPOSSIBLE TO MEET, EFFECTIVELY VETOING THE PROJECT.

THE FERC NEEDS THE SAME "LEAD AGENCY" STATUS WITH STATE AGENCIES AS IT DOES WITH FEDERAL AGENCIES, FOR THE SAME REASONS. STRICT COMPLIANCE WITH THE COMMISSION'S DEADLINES SHOULD BE REQUIRED. FAILURE TO COMMENT SHOULD BE CONSTRUED AS ACQUIESCENCE TO COMMISSION ACTION.

IN A RELATED SUBJECT, SEVERAL SPEAKERS BEFORE THIS SUBCOMMITTEE HAVE SUBMITTED PROPOSALS TO INCREASE STATE INVOLVEMENT IN THE LICENSING PROCESS, INDEED, TO DELEGATE LICENSING TO THE STATES. LET ME ADDRESS THESE PROPOSALS FROM SEVERAL PERSPECTIVES.

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THERE HAS BEEN AN IMPLICATION THAT THE STATES ARE NOT INVOLVED IN THE LICENSING PROCESS TODAY. I DISAGREE STRONGLY. THEY ARE INVOLVED, AS IS DEMONSTRATED BY THE LIST OF STATE AGENCIES I CITED EARLIER AND THE PROBLEMS I HAVE JUST MENTIONED. EVEN AT THE PRELIMINARY PERMIT STAGE, OUR REGULATIONS REQUIRE ALL PERTINENT STATE AGENCIES TO HAVE BEEN CONSULTED IN THE FORMULATION OF THE PROJECT, BEFORE AN APPLICANT SUBMITS AN APPLICATION. WE DO NOT ACCEPT OR PROCESS A LICENSE APPLICATION UNLESS THESE CONSULTATIONS HAVE TAKEN PLACE AND ARE DOCUMENTED.

THE STATES THEMSELVES HAVE THE SAME PROBLEM WE HAVE - TOO MANY AGENCIES, WITH TOO MANY VOICES, AND TOO FEW STAFF IN THE STATE APPROVAL PROCESSES. IN SOME STATES, A DEVELOPER IS REQUIRED TO OBTAIN, ON THE AVERAGE, STATE AND LOCAL PERMITS EQUIVALENT TO FIVE TIMES THE NUMBER OF FEDERAL PERMITS REQUIRED FOR THE SAME PROJECT. FOR EXPEDITIOUS FEDERAL AND STATE REVIEW, THE STATES THEMSELVES NEED TO ESTABLISH AGENCIES WITH "LEAD AGENCY" AUTHORITY.

THIS WOULD BENEFIT NOT ONLY DEVELOPERS, BUT THE FERC, AS WELL. THE STATE AGENCIES RARELY SPEAK TO US WITH ONE VOICE. WE SOMETIMES RECEIVE CONFLICTING VIEWS FROM DIFFERENT STATE AND LOCAL AGENCIES, EITHER AS INTERVENORS OR DURING ONE OF THE REGULAR REVIEWS IN THE LICENSING PROCESS.

WHERE THERE HAS BEEN STATE COORDINATION, SUCH AS WITH THE MASSACHUSETTS GOVERNOR'S ENERGY COUNCIL IN THE LAWRENCE PROJECT ON THE MERRIMACK RIVER, WE ESTIMATE THE LICENSE PROCESS TIME WAS CUT IN HALF FROM WHAT IT WOULD HAVE BEEN OTHERWISE. BOTH MASSACHUSETTS AND MAINE HAVE ENACTED LEGISLATION TO PROVIDE THIS COORDINATION. I COMMEND BOTH STATES FOR THEIR IMPORTANT EFFORTS IN EXPEDITING THE FEDERAL, AS WELL AS THE STATE REGULATORY PROCESS.

SHOULD THE STATES TAKE OVER THE LICENSING OF HYDROELECTRIC PROJECTS? FRANKLY, VERY FEW STATES HAVE THE FINANCIAL RESOURCES TO STAFF ADEQUATELY AN ORGANIZATION WITH THE EXPERTISE REQUIRED TO PERFORM THIS FUNCTION. FEDERAL FINANCIAL SUPPORT FOR SUCH STATE PROGRAMS IS NOT CURRENTLY AVAILABLE. IN ANY CASE, THE MANIFOLD DUPLICATION OF REVIEWS AND APPROVALS WHICH SUCH DELEGATION WOULD ENTAIL IS NOT NECESSARY. THE FERC HAS THE EXPERTISE REQUIRED.

I BELIEVE WE INVOLVE THE STATES NOW IN A REASONABLE MANNER. WHILE STATE PERMITS ARE NOT REQUIRED UNDER FEDERAL LAW, WE HAVE NOT, AS A MATTER OF POLICY, FORCED FEDERAL PREEMPTION OVER STATE STATUTES. WE HAVE ENCOURAGED STATE INVOLVEMENT, THROUGH OUR REGULATIONS. THE ROLE THE STATES PLAY IS A MEANINGFUL ONE. WITH BETTER STATE AND FEDERAL COORDINATION, USING THE "LEAD AGENCY" CONCEPT AT BOTH LEVELS, WE CAN FURTHER - FASTER - THE IMPORTANT HYDROELECTRIC DEVELOPMENT THAT HAS BROUGHT US TOGETHER TODAY.

THANK YOU.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20585

Honorable Tom Bevill
Chairman
Subcommittee on Energy and
Water Development
Committee on Appropriations
U.S. House of Representatives
Washington, D. C. 20515

APR 28 1981

Dear Mr. Chairman:

As you know, in the course of my testimony before the Subcommittee at last month's hearing on appropriations for the Federal Energy Regulatory Commission (FERC), we discussed the difficulties confronting the Commission as it seeks to license hydroelectric power projects in accordance with the Federal Power Act (FPA).

As I stressed in my testimony, the sharp increases in fossil fuel prices in recent years have made hydroelectric power -- a domestic source of power that is clean, renewable, relatively inexpensive, and presently underutilized -- an increasingly attractive alternate energy source. Moreover, Congress has, in just the last few years, accelerated this increased interest in hydropower by providing tax credits and incentives; by creating special rate benefits and regulatory exemptions for hydroelectric "small power production" facilities; by creating new exemptions from FPA licensing requirements for small hydroelectric power projects, and water conduit hydroelectric projects; and by mandating the FERC to streamline and simplify its permitting and licensing processes.

This Commission has sought to carry out these many recent Congressional directives -- and many of this Commission's own internal reforms -- in the most effective and rapid manner. Yet, as I testified, the numbers of applications -- for preliminary permits, licenses, relicenses, and exemptions from licensing -- continue to increase sharply. As they do, the Commission continues to face the problem of undue delays, and unacceptable backlogs

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To meet these problems, I have at your request sought to determine what legislative changes might be appropriate, and what modifications might be made to Part I of the FPA -- the basic hydroelectric licensing statute -- to better suit it to the changed circumstances we face today, more than 60 years after this statute's 1920 enactment.

After careful consideration, I would urge you and your colleagues to seriously consider the following two proposals: The first is essentially the Administration's current proposal to increase this Commission's authority to waive, and thereby substantively revise and simplify, the hydroelectric licensing requirements currently set forth in Part I of the FPA.

However, the enactment of this proposal alone would not in my view offer a complete solution to the problems inherent in the present, excessively complex hydroelectric licensing process.

Accordingly, I urge you to consider as well a second proposal, which seeks to end the current, fragmented, multi-agency hydropower licensing process, by replacing it with one that expressly centralizes all licensing authority -- and all accountability for delays -- in this Commission.

Let me briefly summarize for you the nature and purpose of these two proposals, which I have enclosed herein in the form of a draft bill.

1) Increased Waiver Authority: At present, under the Public Utility Regulatory Policies Act of 1978, and the Energy Security Act of 1980, this Commission has limited authority to waive the FPA Part I licensing requirements for (a) hydropower projects of 5 megawatts or less at existing dams and impoundments, and (b) hydropower projects of 15 megawatts or less installed in water conduits on non-Federal lands, that are used for irrigation or industrial purposes.

The Administration's proposal would expand this waiver authority (and the related authority to prescribe terms and conditions) so that it extends to all projects of 15 megawatts capacity -- whether or not the projects utilize existing dams or new ones,

are on Federal or non-Federal lands, or utilize conduits, rivers, or other watercourses. Wisely employed, I believe this expanded waiver authority could yield some savings in time, expense, and personnel.

2) Centralized Authority and Accountability for Hydroelectric Licensing:

In addition to Part I of the FPA, there are at least twenty other Federal statutes that set requirements affecting the licensing of non-Federal hydroelectric projects. Among these statutes -- many of which have been enacted in the last ten years -- are the National Environmental Policy Act, Federal Water Pollution Control Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, National Trails System Act, Water Resources Planning Act, Wilderness Act, Archeological and Historic Preservation Act, Bureau of Outdoor Recreation Organic Act, Anadromous Fish Act, National Forest Multiple Use Act, Coastal Zone Management Act, Endangered Species Act, Energy Policy and Conservation Act, Federal Lands Management Policy Act, Wild and Scenic Rivers Act, Pacific Northwest Electric Power Planning and Conservation Act, Public Utility Regulatory Policies Act, and the Energy Security Act of 1980. In addition, the procedural requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other statutes must also be followed.

With the enactment of these new statutes, and the asserted vesting in other agencies of authority under them, the result has been that overlapping and conflicting authority over hydro-power projects has been scattered over many agencies other than this Commission. In turn, this has eroded the original concept of the FPA -- to create a "one-stop" Federal licensing authority.

While this Commission has consistently maintained that our issuance of a license under the FPA is the only Federal authorization necessary for the construction, operation, and maintenance of non-Federal hydropower projects, it is true that other Federal agencies have disagreed with this view: To an increasing degree, they have contended that the above-noted statutes have indeed conferred final

decisional authority on them -- not this Commission. And they have contended that these statutory authorities have, in many instances, in effect granted them veto power over hydroelectric projects.

The inevitable result of these differing views is that this Commission and other Federal agencies have expended great efforts in negotiating inter-agency compromises, in attempting to resolve disputes over which agency holds final decisional authority, and in seeking to resolve the mandates of conflicting and ambiguous statutes. Much litigation has resulted, and many delays have been occasioned -- delays that have retarded the development of this important energy source.

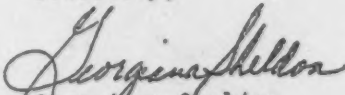
In sum, this Commission has become the focal point of licensing delays, though it is often not responsible for these delays. Clarifying legislation accordingly deserves consideration. In my view, such legislation should make one agency responsible for all licensing decisions, and as well, accountable for all delays. Responsibility should not continue to be diffused and fragmented among many different agencies.

The provisions of the enclosed draft bill seek to achieve this goal. Under these provisions, other agencies would recommend action, and the FERC would have to consider these recommendations. But the FERC would be expressly granted the final decisional authority under the specified statutes.

I realize this proposal may create some controversy. But this proposal is, in my view, a step in the right direction. It deserves careful consideration. Undoubtedly, modifications to it may be desirable. But if we do not address the underlying problems which are the focus of this proposal, we will not in my view be able to significantly improve our present hydroelectric licensing processes.

If I may be of further assistance to you in this important matter, please do not hesitate to contact me.

Sincerely,


Georgiana Sheldon
Acting Chairman

Enclosure

97th Congress
1st Session

H.R. _____

To simplify the regulation of hydroelectric powerplants, to exempt certain hydroelectric powerplants from licensing requirements, to return Federal licensing authority respecting hydroelectric powerplants to the States, to eliminate unnecessary hydroelectric benefits payments, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

, 1981

Mr. _____ introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To simplify the regulation of hydroelectric powerplants, to exempt certain hydroelectric powerplants from licensing requirements, to return Federal licensing authority respecting hydroelectric powerplants to the States, to eliminate unnecessary hydroelectric benefits payments, and for other purposes.

1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled,

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Hydroelectric
5 Licensing Reform Act of 1981".

SECTION 2. The Federal Power Act, 16 U.S.C 792 et seq., is amended by redesignating Part I of such Act as Subpart A of Part I of such Act, and adding a new Subpart B to such Part I, to read as follows:

"Sec. 101. Definitions --

- (a) The term "Federal agency" means an "agency" as defined in 5 U.S.C. §551(1), but does not include the United States itself, or the President of the United States.
- (b) The term "action", with respect to any action by any Federal agency, means "agency action" as defined in 5 U.S.C. §551(13).

"Sec. 102. Simplification of Hydroelectric Powerplant Permit, License, and Exemption Procedures --

- (a) Any action, including any finding, determination, requirement, approval, authorization, or other action --

- (1) by any Federal agency other than the Federal Energy Regulatory Commission,

- (2) with respect to any proposed or existing water power project, as defined in §3(11) of this Act, and

- (3) described in section 102(e) of this Act,

shall be taken, made, or determined by the Commission in lieu of such other Federal agency, subject to the provisions of this Subpart.

- (b) Any such action shall be deemed to be lawfully and properly made by the Commission in lieu of such other Federal agency if, with respect to such proposed action --

- (1) the Commission notifies such other Federal agency in advance of such Commission action,

- 2 -

(2) the Commission requests in such notification a recommendation for such action from such other Federal agency to be transmitted to the Commission within 60 days after issuance of such notification, and

(3) such recommendation, if transmitted to the Commission within such 60-day period, is considered by the Commission.

(c) The provisions of Part III of this Act, including but not limited to provisions respecting rehearing, judicial review, enforcement, venue and jurisdiction, shall apply according to their terms to any action by the Commission in lieu of another Federal agency under this section.

(d) On and after the effective date of this section, no Federal agency other than the Commission shall have any jurisdiction to take any action described in subsection (e); but any such action previously taken by such other Federal agency shall apply and continue in effect as if taken by the Commission under this section.

~~(e) The exclusive authority to take action under the following provisions of law is hereby transferred to the Commission --~~

(1) Section 4(e) of this Act, respecting findings by Department Secretaries on projects within reservations;

(2) Section 4(e) of this Act, respecting approvals of plans by the Chief of Engineers and the Secretary of the Army;

- 3 -

(3) Section 10(e) of this Act, respecting approvals by the Secretary of the Interior in the case of dams or structures in reclamation projects;

(4) Section 11(a) of this Act, respecting approvals of plans and specifications by the Chief of Engineers and the Secretary of the Army relating to navigation facilities;

(5) Section 14(b) of this Act, respecting motions by any Federal department or agency to stay the effective date of issuance of a license;

(6) Section 18 of this Act, respecting directions on lights and signals by the Secretary of Transportation, prescriptions for fishways by the Secretary of Commerce, and rules and regulations regarding pool levels by the Secretary of the Army;

(7) Section 30 of this Act, respecting determinations by the United States Fish and Wildlife Service;

(8) Sections 401 and 404 of the Federal Water Pollution Control Act, respecting issuance of spoil disposal and dredge and fill permits by the Secretary of the Army;

(9) Sections 501(a)(4) and 511 of the Federal Land Management and Policy Act, respecting any right-of-way or other authorization to use, occupy or enter public land or National Forest System land provided by the Secretary of the Interior for any water power project or appurtenant project works otherwise subject to license under this part;

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(10) Section 405 of the Public Utility Regulatory Policies Act, respecting terms and conditions deemed appropriate by the United States Fish and Wildlife Services; or

(11) Section 106 of the National Historic Preservation Act, respecting any binding determination by the Advisory Council on Historic Preservation relating to any Commission action.

(f) No provision of subsection (c) shall be construed to affect the jurisdiction or authority of the Several States to protect, preserve, or regulate water or other natural resources under State or Federal law.

"Sec. 103. Commission Authority to Exempt Certain Projects from the Requirements of Part 1 --

In order to simplify, promote, and expedite the development of non-Federal hydroelectric power projects, and consistent with the public interest and safety, the Commission may, by rule or order, waive the application of any or all provisions of this Part, with respect to any application, permit, license, relicense, amendment, exemption, or notice thereof, for any existing or proposed water power project and appurtenant project works otherwise subject to this Part, if the total installed capacity of such project upon completion is equal to or less than 15 megawatts, subject to any terms and conditions the Commission deems appropriate.

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The authority granted under this section shall be in addition to and independent of any exemption authority respecting hydroelectric power projects provided under Title IV or sections 201 and 210 of the Public Utility Regulatory Policies Act or section 30 of this Act.

"Sec. 104. Effective Dates

(a) Section 102 shall be effective upon the date of enactment of Subpart B of Part I of this Act, and shall apply to any action described in section 102(e) which is not taken before such date of enactment by a Federal agency other than the Commission.

(b) Section 103 shall be effective upon the date of enactment of Subpart B of Part I of this Act, and shall apply to such applications, permits, licenses, amendments, relicenses, or notices of and applications for exemptions, as the Commission may specify."

Senator HUMPHREY. Thank you, Mrs. Sheldon. First of all, may we have a copy of the material you submitted to Congressman Bevill?

Commissioner SHELDON. Yes, sir.

Senator HUMPHREY. Do you have that with you today?

Commissioner SHELDON. I do not have it, but I will provide it for you—yes, we have a copy. I beg your pardon. We have a copy. I think your staff has it.

Senator HUMPHREY. Yes. That is correct. That will be included in the record.¹

Let me also announce at this point that the majority leader made an unusual request that the members come to the floor and stay there for the next hour. He is trying to break a filibuster I think, but I am going to proceed here for just a few more minutes. I am not sure what Senator Murkowski's intent is. I can't speak for him, but I will see if we can't go far enough so that you can go back to your duties, Commissioner. I'm sure you have lots of things to do.

Commissioner SHELDON. We have the State commissions in town. The State commissions are here for a commission meeting in the morning.

Senator HUMPHREY. Will you summarize then what you would have Congress do if you could have your druthers to expedite the hydroelectric licensing process?

Commissioner SHELDON. I think basically one thing the Congress can do even without legislation is to encourage the Federal agencies to work together with memorandums of understanding, and I think we can go a long way in that regard. We have been trying with some of the agencies to no avail. I think maybe the Senate will have to clarify some of the jurisdictional issues at some point in time. Well, the courts are going to, anyway. We are in litigation now on two such issues, so I think we all should be working to get the job done and not worry so much about turf battles. When I say we should have one agency as the lead agency and one agency to make the determinations on licenses, I say the FERC only because that is where the responsibility lies in the Power Act. If it were somewhere else I would say the same thing.

Senator HUMPHREY. Yes, no doubt. How have the memorandums of understanding with the U.S. Army Corps and the Bureau of Reclamation expedited the licensing process?

Commissioner SHELDON. The Corps of Engineers' Memorandum of Understanding is only a few months old, but on the jurisdictional problem, the corps decided it wished to withdraw from one of the cases now in litigation. Now we have another problem. The Department of Justice would not allow the corps to withdraw, so it seems like we get a memorandum of understanding in one area and we have a problem in another, but I think it has the potential for working very well, as does our memorandum with the Bureau of Reclamation.

Senator HUMPHREY. Are you seeking such a memorandum with the Fish and Wildlife Service and Forest Service?

¹ See attachment to Commissioner Sheldon's prepared statement.

Commissioner SHELDON. It is my understanding, sir, that we have been for several years.

Senator HUMPHREY. What is the problem there?

Commissioner SHELDON. We have not had a meeting recently, but I think probably two of the issues, the jurisdictional issue for which we are now in litigation—that will be taken care of—but we also have some problems with the Fish and Wildlife Service on minimum flows with our exemption process and other things which have caused us some problems. I hope we will be able to work out some of these in the future.

Senator HUMPHREY. On page 3 of your testimony you note that PURPA's rules regarding the interconnections with utilities and avoided cost pricing " * * * have been overturned by a recent decision" of the U.S. Court of Appeals. What will be the effect if that decision is sustained?

Commissioner SHELDON. The interconnection part or both or all?

Senator HUMPHREY. The avoided cost pricing.

Commissioner SHELDON. Well, on the avoided cost issue, I do not have any hard data, but it would be my judgment that it would have a substantial effect. In fact, already the financial markets are withholding money for new construction.

Senator HUMPHREY. Is that being appealed? Has the Commission filed an appeal?

Commissioner SHELDON. The Commission last week directed the Solicitor to appeal, yes.

Senator HUMPHREY. In your opinion, if the court of appeals decision is upheld, would a great development incentive be taken away?

Commissioner SHELDON. Yes, it would, certainly not only on hydroelectric but certainly cogeneration.

Senator HUMPHREY. You list on page 5 of your testimony some of the actions that the Commission has taken to streamline the licensing process. Do you have further plans along these lines? Do you have other things you intend to do?

Commissioner SHELDON. Well, I think first, Senator, we are going to try these for a while and see how they work, and certainly as with any rulemaking we must refine the process as we go along, but right now we haven't had them in operation, long enough to be ready to alter them.

Senator HUMPHREY. If Congress were to grant FERC one-stop shopping authority, would you still be able to take into adequate account the various environmental concerns?

Commissioner SHELDON. Sir, we do all the time, and it wouldn't make any difference whether it was vested in one place or four or five. All we would be doing is coordinating. It would be a coordination effort. We would not be supplanting the Fish and Wildlife Service at all. All we could try to do is coordinate the effort and get everything in place in a more timely fashion.

Senator HUMPHREY. I thought you would say that.

Commissioner SHELDON. Well, that's the way I see it, sir.

Senator HUMPHREY. Oh, I'm sure. Page 27, you express a concern about whether the states have financial resources and other resources to take over the licensing of hydroelectric facilities. In the

case of those States which have, if any, or perhaps some might have in the future, why would you object to doing that?

Commissioner SHELDON. Senator, my only concern is that our responsibility is for licensing authority in interstate commerce, and I don't know how we would. Which State would we give authority to license the project if you had a power project which would affect Maine, Vermont, and New Hampshire? I don't know. I mean there are some things—I am not against doing this. I just don't know how we can do it with our enabling statute.

Senator HUMPHREY. Again on the matter of this one-stop shopping authority, would it be your intent that statutory responsibility and the authority of these various Federal and State agencies would be restricted, or is it your intent that the timing latitude would be tightened up?

Commissioner SHELDON. It would not be my intention to supplant or restrict any authority. It is merely to insure that the timetables which we have in regulations are adhered to, and you have one central authority to do it and one central authority to take the responsibility if there is a delay. That's all.

Senator HUMPHREY. Supposing that were in existence and some agency did not make its decision within the allotted time? What recourse would you have?

Commissioner SHELDON. I guess they could intervene at a later date. Even if they don't intervene, most of our actions are subject to appeal rights, anyway, so they could appeal.

Senator HUMPHREY. Well, perhaps I am missing the point then. If there are no teeth in the authority we were to give FERC with regard to one-stop shopping, then what would we be accomplishing? We would have no means of enforcing timely decisions?

Commissioner SHELDON. You are merely eliminating other authorities that do the same thing. That's all you are doing. More or less I see it as a management operation more than I do taking anybody's authority away from them. It is analagous to the Federal Inspector's office for the Alaska project.

Senator HUMPHREY. I am not sure, perhaps I am missing the point there. In any case, it can be discussed between the staffs.

Commissioner SHELDON. Pardon?

Senator HUMPHREY. I might be missing your point there but I don't see how this will solve the problem. I would note for the record that a rollcall vote is under way and I am trying to finish up. What I do not understand is what good it would accomplish to give FERC one-stop shopping authority if you had no means to procure a timely decision?

Commissioner SHELDON. I guess maybe what you are getting at is that we would assure agreement absent other agencies' real formal opposition. I think that is about where we are coming down.

Senator HUMPHREY. Are you saying that if the other agency involved did not make a timely decision, it would simply be left out of the process, that under one-stop shopping you would have the authority to make that decision?

Commissioner SHELDON. No. Up front we consider all other agencies' concerns. We do that now. We would do that under what is called one-stop, so they do have an avenue and a vehicle to give us

their concerns. If they do not like the way we have taken their concerns into consideration, they do have the legal vehicle of appeal.

Senator HUMPHREY. Yes.

Commissioner SHELDON. Which they have at the present time; all I am saying is now at the present time, nobody has the responsibility and nobody has the authority for getting everything together.

Senator HUMPHREY. We are certainly going to explore that in some greater detail, but we needn't do it right at this juncture.

On the matter of owner preference, as you know, there are many site owners who are complaining about losing the rights to their property in effect. Are you working on some proposal for owner preference?

Commissioner SHELDON. Sir, there is no proposal at the moment for owner preference.

Senator HUMPHREY. Do you have the statutory authority to do that?

Commissioner SHELDON. Within the next month, we will be having a case come before the Commission in which that will be considered. We also have under litigation the *Bountiful Utah* case which also addressed that question.

Senator HUMPHREY. Is it your opinion that FERC has the authority to, if it decided to do so, to grant the site owner preference over any other party?

Commissioner SHELDON. I do not believe that we do. We certainly don't over municipalities, but I would not want to get into whether we did or not on the other. I cannot prejudge my situation.

Senator HUMPHREY. The matter of raising fees as a revenue measure has come up. I believe that you had it in your testimony.

What about the matter of higher fees as a filter to cut down on applications which perhaps aren't as serious as others?

Commissioner SHELDON. I think what we would do, Senator, would merely be to assess a fee for preliminary permits which in the final analysis would be part of the total. It would just put the fee up front rather than waiting until the licensing process.

Senator HUMPHREY. The fee now is assessed later?

Commissioner SHELDON. The fee is assessed at the license stage, not at the preliminary permit stage.

Senator HUMPHREY. Very well; we will have a number of questions we would like to submit to you in writing, if you will respond likewise?

Commissioner SHELDON. We will be pleased to.

Senator HUMPHREY. Commissioner, thank you very much for your testimony and for your time.

Commissioner SHELDON. Thank you, sir. Is there anything else you wish to have supplied for the record?

Senator HUMPHREY. No; thank you very much. We would like to ask the remaining witnesses to stay. We are going to try to continue. I have to leave for the moment at least. There is a rollcall vote under way, and therefore, I will suspend the hearing temporarily.

Thank you.

[Whereupon, a brief recess was taken.]

Senator MURKOWSKI. I want to apologize to the witnesses that have been so gracious in assisting us in the expeditious carry-on of our duties.

I call the next witness, Robert N. Broadbent, the Commissioner of the Bureau of Reclamation, Department of the Interior.

Commissioner Broadbent, we look forward to your testimony and again I apologize for the inconvenience which you have endured so graciously. Please proceed.

**STATEMENT OF HON. ROBERT N. BROADBENT, COMMISSIONER,
BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR,
ACCOMPANIED BY ROLF WALLENSTROM, FISH AND WILDLIFE
SERVICE**

Commissioner BROADBENT. Thank you very much, Chairman Murkowski and Chairman Humkhrey. I appreciate the opportunity to appear for the Department of the Interior today.

We in the Department of the Interior are well aware of the significant contribution that hydroelectric power has made and will continue to make toward the energy needs of this Nation. This hearing is most timely and should result in a giant step in the direction of insuring that hydropower potential of the Nation is soon realized through sound licensing and development procedures.

The administration strongly supports the development of hydroelectric energy at economically, financially, and environmentally feasible sites.

I am going to try and shorten this as much as I can, Mr. Chairman, because I have the obligation to speak for the BLM, the Fish and Wildlife Service, and the Bureau of Reclamation. I may take just a little bit longer than I would otherwise.

We believe we can assist in the development of hydroelectric power by working cooperatively with the Federal Energy Regulatory Commission to assist in making available to non-Federal hydropower developers Federal lands and sites administered by the various agencies of the Department of the Interior for development where such development would cause no major conflicts with Federal or trustee programs or users. This cooperation should result in rapid development of hydroelectric potential and increased local involvement in the development process.

I would say to you, if I might, that we certainly support S. 306 and its goals and we were intrigued by comments of Senator Murkowski when he talked about a Federal power development fund. If we can help in any way, we certainly would be glad to do so.

Senator MURKOWSKI. Thank you. I will be interested in working with you and your staff.

Commissioner BROADBENT. As a first step in this direction, the Department has directed that its agencies insure a rapid review and response to Commission permit and licensing applications on which we are requested to comment. Since the agencies in the Department have different public trust functions and responsibilities that must be satisfied in the development of power potential on the lands that we administer, each agency will have a somewhat different responsibility which must be satisfied in working with the Commission to make Federal sites available for non-Federal development. Many serious issues have been identified between the Interior Department and the Commission which must be resolved.

The Bureau of Reclamation is responsible for meeting statutory and contractual obligations for water and power services, flood control, navigation, water quality, and environmental protection. A primary concern of Reclamation must be the meeting of these obligations while working with the Commission to facilitate the development of hydropower potential of the many water development projects administered by Reclamation.

On June 22, 1981, Reclamation entered into a memorandum of understanding with the Commission providing for joint participation in non-Federal hydropower development in the approval of plans, drawings, project access, lease of power privileges charges, and use of lands administered by Reclamation. This memorandum was entered into in the interest of mutual cooperation with the Commission for the expedient non-Federal development of hydroelectric energy at sites administered by Reclamation. Several meetings have been held and more are planned with the Commission to facilitate resolution of the additional issues between Reclamation and the Commission.

These issues include the rights and priorities of local water and power project operators or beneficiaries in the development of power potential of the projects; Commission permit applications for projects on which the Congress has authorized Federal development of hydropower potential; establishing of power privileges charges for Reclamation project sites and the contribution of collections from these charges to the reclamation fund for use in water development projects; options for selecting the non-Federal power site developer; operational and physical integrity of water and power project structures during construction and operation of non-Federal hydropower development; the possibility for optimizing power potential and reducing development and operational costs of various sites in the same geographical area by consolidation of development privileges under a single licensing entity; lastly, the potential for the use of the output from non-Federal energy developments in meeting Federal power project needs and the Federal power consumer needs.

These issues are of serious concern to the Interior Department and their resolution has been moving very slowly. However, we will continue to work with the Commission to build upon the foundation provided by the June 22 memorandum of understanding.

The concerns of the Bureau of Land Management are somewhat different. Under title V of FLPMA, the BLM is responsible for granting all rights-of-way across public lands, including rights-of-way for generation, transmission, and distribution of electric energy. Applicants for such rights-of-way must also comply with all applicable requirements of the Federal Power Act. Discussions are being held between BLM and the Commission concerning BLM's land managing and right-of-way granting responsibility and the Commission's responsibilities under the Federal Power Act for licensing hydropower development projects.

However, BLM is not given the opportunity to review Commission permits and license requests under the Federal Power Act except as a formal intervenor in the legal proceedings. In addition, there is no BLM involvement in the application review and approval of Commission withdrawals for power project purposes, although

we believe it was the intent of the Federal Land Policy and Management Act that they should be processed under that act.

We believe that it would be most beneficial if the extent of the Commission authority were clarified by law and any unilateral withdrawal authority of the Commission be terminated.

The Federal Power Act should be amended to direct the Commission to comply with the laws relative to withdrawals that apply to all Federal agencies and Federal land withdrawal regulations of the Department of the Interior when seeking new withdrawals. This would assure that public lands could not be withdrawn without the consent of the Federal agency with jurisdiction over lands, the agency most prepared to make decisions regarding the best use of those lands.

In keeping with the administration's policy that withdrawals should be reviewed and revoked where possible to permit multiple use of federally owned lands, the Commission should be funded to expedite its review of withdrawals and revocation of the hundreds of obsolete power site classifications still in effect in order to permit the eventual return of the land to multiple use management and development.

One method the Commission is using to expedite hydropower development is to allow exemptions from licensing in accordance with section 408 of the Energy Security Act of 1980 for projects of 5 megawatts or less where, first, no natural resource impacts of significance would occur, or second, terms and conditions can be imposed on project construction, and O. & M., to make the project environmentally acceptable. The Commission estimates that about 66 percent of the projects currently before it for review are less than 5 megawatts in size and could potentially qualify for exemption from licensing. The case-by-case exemption process appears to be working well. Recently the Commission has issued another exemption procedure known as order 202 to implement the Energy Security Act with regard to categorical exemption of small hydropower projects.

Our views concerning aspects of this rulemaking have been set forth in detail in a letter from Under Secretary Don Hodel to the Commission on September 1, 1981. We support and stand by those views, and a copy of that letter is attached to this statement for the record.

In accordance with the clear congressional mandate in section 30(c) of the Federal Power Act, the Department of the Interior, acting through the Fish and Wildlife Service, will continue to address the full range of resource values which may be impacted by projects proposed for exemption under this order. We are hopeful that any inconsistency between clear congressional intent set forth in section 30(c) and the Commission's categorical exemption in order 202 will not impede the efforts of any project applicant. We want to stress that section 30(c) is clear in its expression of congressional intent, and in the absence of any actions by Congress to change that expression, we intend to comply with our responsibilities under the Federal Power Act.

Mr. Chairman, these are issues that the Department is concerned with in working with the Commission to encourage sound and timely development of potential hydropower resources. As I

stated earlier, we will continue to work with the Commission on the resolution of these issues.

However, many of the issues are of such concern that if necessary, we will seek resolution through the legislative or judicial processes.

Again, I appreciate the opportunity to work with you today in your efforts to advance the development of the Nation's hydroelectric power potential. I would be happy to respond to any questions that you or any members of the panel might have. I would like to indicate, Senator, that we have representatives of the Bureau of Land Management and the Fish and Wildlife Service as well as the Bureau of Reclamation here if any questions arise.

[The prepared statement of Commissioner Broadbent follows:]

STATEMENT OF
ROBERT BROADBENT, COMMISSIONER
BUREAU OF RECLAMATION
DEPARTMENT OF THE INTERIOR
BEFORE THE JOINT SUBCOMMITTEES ON
ENERGY REGULATION AND WATER AND POWER
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
OVERSIGHT HEARING ON
HYDROELECTRIC DEVELOPMENT AND LICENSING PROCEDURES

February 24, 1982

Mr. Chairman, members of the Committee and Subcommittees, I appreciate the opportunity of being with you today to participate with you in this oversight hearing on hydroelectric development and licensing procedures. We in the Department of the Interior are well aware of the significant contribution that hydroelectric power has made and will continue to make toward meeting the energy needs of the Nation. We recognize the continuing role that clean, renewable hydroelectric energy resources play in increasing the Nation's domestic energy supplies and decreasing the dependence on foreign oil imports. This hearing is most timely and should result in a giant step in the direction of insuring that hydropower potential of the Nation is soon realized through sound licensing and development procedures.

The Administration strongly supports the development of hydroelectric energy at economically, financially, and environmentally feasible sites. We believe that we can

assist in this development by working cooperatively with the Federal Energy Regulatory Commission (Commission) to assist in making available to non-Federal hydropower developers Federal lands and sites administered by the various agencies of the Department of the Interior where such development will cause no major conflicts with Federal or Trustee programs or uses. This cooperation should result in rapid development of hydroelectric potential and in increased local involvement in the development process. Use of private development capital will reduce Federal competition for limited investment funds and will avoid the possibility of expansion of the massive Federal debt. We encourage non-Federal interests to pursue the development of hydroelectric energy and will make every effort to facilitate that development at sites for which the Department has administrative responsibilities. As a first step in this direction, the Department has directed that its agencies insure a rapid review and response to Commission permit and license applications on which we are requested to comment. We are making every effort to assure that these requests will be satisfied within 30 days after they are received.

Since the agencies in the Interior Department have differing public trust functions and responsibilities that must be satisfied in the development of power potential on the lands

that we administer, each agency will have a somewhat different responsibility which must be satisfied in working with the Commission to make Federal sites available for non-Federal development. Many serious issues have been identified between the Interior Department and the Commission which must be resolved.

The Bureau of Reclamation is responsible for meeting statutory and contractual obligations for water and power services, flood control, navigation, water quality, and environmental protection. A primary concern of Reclamation must be the meeting of these obligations while working with the Commission to facilitate the development of hydropower potential of the many water development projects administered by Reclamation. On June 22, 1981, Reclamation entered into a Memorandum of Understanding with the Commission providing for joint participation in non-Federal hydropower development in the approval of plans and drawings, project access, lease of power privileges charges, and use of lands administered by Reclamation. This memorandum was entered into in the interest of mutual cooperation with the Commission for expedient non-Federal development of hydroelectric energy at sites administered by Reclamation. Several meetings have been held and more are planned with the Commission to facilitate resolution of additional issues between Reclamation and the Commission including:

1. Rights and priorities of local water and power project operators/beneficiaries in the development of power potential of the projects.
2. Commission permit applications for projects on which the Congress has authorized Federal development of hydropower potential.
3. Establishing of power privilege charges for Reclamation project sites and the contribution of collections from these charges to the Reclamation Fund for use in future water project development.
4. Options for selecting the non-Federal site developer.
5. Operational and physical integrity of water and power project structures during construction and operation of non-Federal hydropower developments.
6. The possibilities for optimizing power potential and reducing development and operational costs of various sites in the same geographical area by consolidation of development privileges under a single licensing entity.
7. Potential for use of the output from non-Federal energy developments in meeting Federal project power needs and Federal power customer needs.

These issues are of serious concern to the Interior Department and their resolution has been moving very slowly. However, we will continue to work with the Commission to build upon

the foundation provided by the June 22, 1981, Memorandum of Understanding.

The concerns of the Bureau of Land Management are somewhat different. Under Title V of the Federal Land Policy and Management Act of 1976, the BLM is responsible for granting all rights-of-way across public land including rights-of-way for generation, transmission, and distribution of electrical energy. Applicants for such rights-of-way must also comply with all applicable requirements of the Federal Power Act.

Discussions are being held between BLM and the Commission concerning BLM's land managing and right-of-way granting responsibilities and the Commission's responsibilities under the Federal Power Act for licensing hydroelectric development projects. However, the Bureau of Land Management is not given the opportunity to review Commission permit and license requests under the Federal Power Act except as a formal intervenor in legal proceedings. In addition, there is no BLM involvement in the application, review and approval of Commission withdrawals for power project purposes although we believe it was the intent of the Federal Land Policy and Management Act that they should be processed under that Act. We believe that it would be most beneficial if the extent of

the Commission authority were clarified by law and any unilateral withdrawal authority of the Commission be terminated. The Federal Power Act should be amended to direct the Commission to comply with the laws relative to withdrawals that apply to all Federal agencies and Federal Land Withdrawal Regulations of the Department of the Interior when seeking new withdrawals. This would assure that public lands could not be withdrawn without the consent of the Federal agency with jurisdiction over the lands, the agency most prepared to make decisions regarding the best use of those lands.

In keeping with the Administration's policy that withdrawals should be reviewed and revoked where possible to permit multiple use of federally owned lands, the Commission should be funded to expedite its review of withdrawals and revocation of the hundreds of obsolete powersite classifications still in effect in order to permit eventual return of the lands to multiple use management and development.

One method the Commission is using to expedite hydropower development is to allow exemptions from licensing in accordance with Section 408 of the Energy Security Act of 1980 for projects of 5 megawatts or less where:

1. no natural resource impacts of significance would occur, or
2. terms and conditions can be imposed on project construction, operation and maintenance to make the project environmentally acceptable.

The Commission estimates that about 66 percent of the projects currently before it for review are less than 5 megawatts in size and could potentially qualify for exemption from licensing.

The case-by-case exemption process appears to be working well. Recently, the Commission has issued another exemption procedure, known as Order 202 (Docket No. 81-7), to implement the Energy Security Act with regard to categorical exemption of small hydropower projects. Our views concerning aspects of this rulemaking have been set forth in detail in a letter from Under Secretary Donald Hodel to the Commission on September 1, 1981. We support and stand by those views and a copy of that letter is attached to this statement for the record.

In accordance with the clear Congressional mandate contained in Section 30(c) of the Federal Power Act, the Department of the Interior, acting through the Fish and Wildlife Service,

will continue to address the full range of resource values which may be impacted by projects proposed for exemption under this Order.

We are hopeful that any inconsistency between clear Congressional intent set forth in Section 30(c) and the Commission's categorical exemption in Order 202 will not impede the efforts of any project applicant. We want to stress that Section 30(c) is clear in its expression of Congressional intent and in the absence of any action by Congress to change that expression, we intend to comply with our responsibilities under the Federal Power Act.

Mr. Chairman, these are issues the Department is concerned with in working with the Commission to encourage sound and timely development of potential hydropower resources. As I stated earlier, we will continue to work with the Commission on the resolution of these issues. However, many of the issues are of such concern that, if necessary, we will seek resolution through the legislative or judicial processes. Again, I appreciate the opportunity of working with you today in your efforts to advance development of the Nation's hydroelectric power potential. I would be happy to respond to any questions that you and members of the panel may have for me at this time.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 1 1981

Mr. Charles M. Butler
Chairman
Federal Energy Regulatory Commission
Washington, D.C. 20426

Dear Mr. Butler:

This responds to Mr. Lindsay's letter of March 16 stating the Commission's understanding of the matters discussed at a meeting of March 4 between members of the Commission staff (Staff) and the Fish and Wildlife Service (Service) concerning FERC Docket No. RM81-7. Staff called the meeting principally to request that the Service reconsider its comments contained in the Department of the Interior (Department) February 24 letter on the proposed rulemaking, together with points raised in the March 4 meeting and provide the FERC with this letter stating whether the Service intends to exercise, through this rulemaking, its authority under Section 30(c) of the Federal Power Act ^{1/}. It would be possible to construe the Department's comments on the rulemaking as a waiver or withholding by the Fish and Wildlife Service of its authority to impose binding terms and conditions under Section 30(c).

^{1/} Section 30(c), as made applicable to this rulemaking by Section 408 of the Energy Security Act, 94 Stat. 611, provides:

In making the determination under subsection (a) of this section the Commission shall consult with the United States Fish and Wildlife Service and the State agency exercising administration over the fish and wildlife resources of the State in which the facility is or will be located, in the manner provided by the Fish and Wildlife Coordination Act and shall include in any such exemption—

1. such terms and conditions as the Fish and Wildlife Service and the State agency each determine are appropriate to prevent loss of, or damage to, such resources and otherwise carry out the purposes of such Act; and
2. such terms and conditions as the Commission deems appropriate to insure that such facility continues to comply with the provision of this section and terms and conditions included in any such exemption. 16 U.S.C. § 823(a).

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In the meeting of March 4, Mr. Roecker brought to our attention Staff's interpretation of Section 30(c). FERC has proposed to exempt on a generic basis small hydroelectric projects with capacities of 100 kilowatts to 5 megawatts from the "fast track" (case-by-case) licensing requirements set out in Docket RM80-65 if they have certain general characteristics and where the exemption applicant files with the Commission a notice attaching, among other things, a limited certification from fish and wildlife agencies. The certification relates only to one type of fish and wildlife concern covered by Section 30(c)-that of migratory fish. The rulemaking would also exempt a category of small hydroelectric projects under 100 kilowatts from the licensing requirements without any general provisions, review and certification, or filing of a notice. Staff informed us that, in both instances, the Fish and Wildlife Service and the States must exercise their authority under Section 30(c) before issuance of the rules, and as part of the rules.

Our concern is that no opportunity is provided by the proposal for wildlife agencies to exercise their statutory role under Section 30(c) for projects under 100 kilowatts or, with respect to those over 100 kilowatts, to exercise that authority at the time the certification is sought or granted unless the aforementioned certification is denied 2/. Thus, unlike the situation presented in Docket RM80-65 3/, a problem is presented because the Commission proposes to limit the application of Section 30(c) of the Federal Power Act on a site-specific basis.

In meetings with Staff and in the Environmental Assessment on RM81-7, it was stated that the rulemaking was intended to exempt only such small hydroelectric projects as would have minimal environmental effects. We support the concept of exempting such projects where the impacts are environmentally compatible. We would anticipate that, with some regional variation, a majority of the projects described in Section 4.109 would answer that description. However, some of the projects that would be eligible for exemption could have unacceptable adverse impacts to resources other than migratory fish. The rulemaking is intended to apply to projects that are "purely run-of-river," but that category is defined as including storage projects. The rulemaking would allow the installation or addition of hydroelectric capacity or continued operation of unlicensed projects at existing facilities where the facility or its

2/ Although the Commission Staff assured us at the March 4 meeting that denial of a certification would render the exemption rules inapplicable and require some other form of licensing or exemption, this is not apparent from the proposed rules and should be clarified by the FERC.

3/ In Docket RM81-65, the Commission adopted simplified licensing requirements for certain small hydroelectric projects, but proposed to grant exemptions on a case-by-case basis, after review of an application and insertion of any terms and conditions added by fish and wildlife agencies under Section 30(c).

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operation may have caused an adverse impact on fish and wildlife resources in the past. The wording of Sections 4.109(a)(2) relating to "normal" maximum surface elevation and 4.109(a)(3) relating to maintenance of "prevailing" storage and release regimes of water at existing dams is ambiguous and could include some operating modes deleterious to fish and wildlife such as impacts to downstream fisheries and alteration of sediment transport. In addition, the water quality of downstream releases could be affected in a manner adverse to fisheries from components not covered by water quality standards. Total diversion of water from a 300-foot section of a stream could have adverse impacts on tailwater fisheries and other significant aquatic resources. The environmental effects of projects of 100 kilowatts or less would be completely removed from individual scrutiny under Section 30(c). None of these kinds of effects could be examined on a case-by-case basis prior to exemption unless the project is larger than 100 kilowatts and fish and wildlife agencies were unable to certify that there is no significant existence of upstream or downstream migration of fish (as per RWSI-7). Your March 16 letter suggests that the certification address only fish restoration measures. Even where such certification could be properly denied and therefore case-by-case review initiated, it is not clear whether terms and conditions could be applied by fish and wildlife agencies addressing matters other than migratory fish problems.

We believe that it is inappropriate to limit the review afforded fish and wildlife agencies under Section 30(c) in the exemption process over that which is provided for in the case-by-case exemption reviews. We could not be expected to permit these projects to be exempt altogether from licensing or case-by-case review without exercising an authority that Congress specifically directed Federal and State agencies to carry out. Therefore, Article 2 (Section 4.111(b)) and the certification required by Section 4.112(b) and 4.112(c) should be expanded to conform to the wording and intent of Section 30(c). The Commission itself has stated what Section 30(c) requires at 18 C.F.R. §§ 4.106 and 4.106(e). Article 2 (Section 4.111(b)) and the Certification of Section 4.112(b) and (c) should also be revised to cover migratory fish introduction programs as well as migratory fish restoration programs. This is consistent with the intent shown in the Environmental Assessment. Both article and certification should be clearly worded to require case-by-case review when the fish and wildlife agencies withhold such certification because of impacts to fish and wildlife resources. The above should be considered as terms and conditions under Section 30(c).

As stated in our meeting of March 4 and previous comments of record, the categorical exemption of projects with an installed capacity of 100 kilowatts or less is inappropriate because there is no basis shown for assuming that the environmental effects will necessarily be any different than those of projects exempted by Section 4.109. The Environmental Assessment did not even address this category of projects. The installed capacity of a generator says little about the environmental effects of its use. This provision would exempt projects on streams that could contain important fish and wildlife resources without opportunity for the Service to evaluate individual project impacts or to apply such statutes

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as the Endangered Species Act. If installed on small first and second-order streams supporting important fish and wildlife resources, such projects could have significant effects, depending upon the flow requirements of the project. Further, while small individually, such projects could have significant cumulative effects when several projects are developed in the basin. Until a basis has been developed for treating these projects differently and evaluating their environmental effects in the setting in which they will be operated, we continue to believe that this category should be eliminated and the projects included under Section 4.109. This should be considered as a term or condition under Section 30(c).

Provision 4.109(a)(6) should be changed to read as follows:

"Utilizes only a dam at which there are not significant upstream or downstream passage or existence of populations of migratory fish."

This change would provide for case-by-case analysis of exemptible projects where the dams are presently barriers to passage of existing fish populations. In those instances where there are existing populations of migratory fish, the project should not be eligible to exemption. This will facilitate the exemption process by allowing development at all sites which do not have populations of migratory fish. At those sites that have the potential to support migratory fish runs, the certification process would clearly indicate to developers any future responsibility during the planned life of the project to implement any needed measures. Conversely, at those sites where fish passage is not anticipated during the certification process, the developer would be so informed. At a majority of sites throughout the country, we anticipate that there would not be an immediate need to implement fish passage measures and they would, therefore, be otherwise eligible for exemption under RM81-7.

It should be noted that the effect of these terms and conditions should not result in regulatory delay for the applicant nor be burdensome to the Commission if these projects will have no serious environmental effects. We believe that a majority of the projects, particularly those which are strictly run-of-the-river, would pose minimal problems other than for fish passage, and even then, only in a limited number of cases. These terms and conditions would, however, provide that where projects pose resource problems, specific mitigation measures could be required or the project handled on a case-by-case or licensing basis. The case-by-case review, itself a fast-track procedure, would not unduly delay such projects.

We also believe that some additional modifications to the proposed rulemaking would more clearly limit the exemption to projects which truly do not have the capability of presenting significant changes to the environment. Adoption of these measures would further insure that fish and wildlife agencies could make positive certifications.

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We noted previously the ambiguity associated with Sections 4.109(a)(2) and 4.109(a)(3). While Staff and the Environmental Assessment make it clear that the intent of these provisions was to restrict exemption to those projects that are run-of-the-river and do not result in changes in project operation, the wording as found in the proposed rulemaking could allow for some changes in project operation and streamflows. Therefore, we recommend that the following general provision be substituted:

"Does not include for the purpose of generating electric power any facility other than one at which instantaneous outflow immediately below the project is equal to instantaneous inflow above the dam, minus evaporative losses."

This would exempt run-of-the-river operations from case-by-case review.

Section 4.109(a)(4) does not appear to meet your "No substantial environmental changes" criteria for this rulemaking. A diversion of water from a 300-foot reach of a river, with the attendant possibility of dewatering the streambed and fishery, could present serious issues requiring case-by-case review.

We agreed at our March 4, 1981, meeting that the certification process should present an opportunity for State and Federal fish and wildlife agencies to clearly indicate to developers any foreseeable future responsibility they might have to undertake during the planned life of the project, as required by Section 30(c). We would therefore concur in a provision of the certification process, or of Article 2, which would foreclose future imposition of Section 30(c) terms and conditions which were not foreseen and made known to the exemption candidate at the time that the exemption was sought. However, when certifications are sought, we believe it is appropriate that we advise the project sponsor that:

1. Migratory fish restoration and introduction measures may be undertaken in the future at public expense requiring the operator to allow modification of structures and provide flows such that their reliance on the project should not be developed to the point that they would have to oppose such measures;
2. Requirements will not be imposed regarding impacts from past actions either during pre-exemption consultation, or subsequently, on those project beneficiaries who have not been responsible for past harm to fish and wildlife resources caused by the construction or operation of the impoundment project in question.

Section 4.109(a)(9) may be overly restrictive, but nevertheless must be reworded as follows to conform to the requirements of the Endangered Species Act:

"Construction and operation of the project will not affect endangered, threatened or proposed species or designated or proposed critical habitat as determined by the Secretary of the Interior or Commerce."

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If this rulemaking is not changed to insure that exempt projects would not change the periodicity, rate or amount of flow below the project, we continue to believe that Section 4.109 should bar use of the exclusion by the projects which would thus affect the property interest of the United States, particularly its water rights, and of those which may present issues for this Department under Section 7(a) or (b) of the Wild and Scenic Rivers Act.

In order to avoid any undue delays from our review, we are prepared to enter into a Memorandum of Understanding providing that we have 30 days within which to make our response. We do feel that it is necessary that we have at least that minimum opportunity to consider the impacts of a project.

We would be glad to meet with you to further discuss this matter. Additional comments on RMS1-13 will be forthcoming.

Sincerely,

Donald Paul Hodel

UNDER SECRETARY

cc: Secretary's Reading File(2)
CCU ES/Files
Directorate Reading File
DD Chron AE

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Second page Rewritten per U/S Hodel 9/1/81

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Senator MURKOWSKI. Thank you very much, Commissioner Broadbent. I was particularly pleased to note your reference on page 2 of making the effort to assist and assure that requests that are submitted will be satisfied within 30 days after they are received. I assume you speak for the agencies that you represent here today other than the Bureau of Reclamation, that is BLM and Fish and Wildlife?

Commissioner BROADBENT. That was a statement that was made by Under Secretary Hodel to FERC, and it applies to all agencies of the Department of the Interior.

Senator MURKOWSKI. Great. Having had the opportunity on several occasions to meet with Don, I can understand that. I assume you read it the same way I do. That is the policy of Interior, is that right?

Commissioner BROADBENT. That is correct.

Senator MURKOWSKI. Let me ask you one more question. Within that 30-day period, is it the intent to actually finish the processing requirements or might that 30 days be construed as a period of time in which you need more information and request another 30 days for actual action?

Commissioner BROADBENT. Let me ask the people from Fish and Wildlife to respond because I think those are the people that you are probably referring to.

Senator MURKOWSKI. No, I wasn't going to pick out anybody.

Commissioner BROADBENT. I think on behalf of the Bureau of Reclamation it would be our intent to try and answer them all within 30 days.

Senator MURKOWSKI. It would be worth clarifying that. It might be worthwhile to clarify just what the ground rules are with regard to policy.

Commissioner BROADBENT. Let me have somebody from Fish and Wildlife comment, and we will submit that to the record for all the Department of the Interior agencies.

Senator MURKOWSKI. Would you introduce your associate?

Commissioner BROADBENT. Mr. Chairman, this is Rolf Wallenstrom from the Fish and Wildlife Service.

Senator MURKOWSKI. Mr. Wallenstrom?

Commissioner BROADBENT. Yes.

Senator MURKOWSKI. We welcome you to the committee and appreciate any enlightenment you would care to give the Chair on your understanding of the procedure in this 30-day time period which I gather is a policy of Interior.

Mr. WALLENSTROM. Thank you, Mr. Chairman. The 30-day statement came from Mr. Hodel's letter which was stimulated by the exemption process and the rulemaking procedure that was prior to docket 81-7, and we had reacted to the proposed rulemaking and suggested some wording, and among the wording was that the Fish and Wildlife Service would commit to commenting within 30 days on the exemption process. Failure to do so, of course, would negate our comments.

Senator MURKOWSKI. All right. You don't feel then you have a problem in the sense of an applicant who would submit material and then upon examination you might request additional material,

and that could cause that 30 days to extend into 60 days or two 30-day periods? Am I correct?

Mr. WALLENSTROM. There will be, I am sure conditions like under the Endangered Species Act where you have endangered species where an impact might be suspected, and we might notify an applicant then that if we had to make the decision in 30 days we would have to give a negative reaction, but with some additional information we probably could recommend a procedure that would avoid any impacts to that particular species.

Senator MURKOWSKI. I take it then in the more routine cases you feel that you can act within the 30-day period?

Mr. WALLENSTROM. Sure.

Senator MURKOWSKI. I think that is very gratifying. I commend you and the Fish and Wildlife on your intent to turn this process and processing times around and still give them the scrutiny and attention that is needed.

Let me ask you one more question for the record. Do you feel as a consequence of this new policy that it will deter in any way your ability to carry out your examination in the best interests of your particular area of responsibility or do you feel it is within the reasonable capability of your Department staff?

Mr. WALLENSTROM. We feel that section 202 does conflict with section 30(c).

Senator MURKOWSKI. This is the first time I have read either one.

Mr. WALLENSTROM. In section 30(c) of the Federal Power Act, it directs the Fish and Wildlife Service and the State game and fish agencies to stipulate binding terms and conditions appropriate to prevent loss of or damage to such resources as might be within their domains.

The language in 202 which is the new exemption process restricts comments to two areas. It restricts comments to areas on migratory fish and endangered species. Under Secretary Hodel has indicated that we think that our direction should come from what Congress passed in section 30(c) and we will continue to comment that way, but we are fearful that perhaps this conflict might, rather than being handled in the rulemaking process, end up in delaying a particular applicant for a water permit, the problem being, to give you an example of what might happen, that we could have other concerns. For instance, a State wildlife agency might be concerned for their fur-bearer population—muskrat, or mink—who live adjacent to the water's edge, and the impoundment under the small hydro project might then fluctuate that water level, either flooding out their wintering habitat while they are in there and thereby having an impact—during their particular part of the season, the water levels could be stipulated to be maintained at a certain level and for say 11 months out of the year there would be no problem at all. I just cite this as the type of example which we don't consider to be a great problem, could be easily solved, but yet we believe the wording in 202 would preclude both the States and the Fish and Wildlife Service from commenting on it.

Commissioner BROADBENT. Mr. Chairman, I am not sure that we were responsive to your question. As I understand your question, it

is do we feel it would impact upon our mission if we have to comment within 30 days.

That was discussed with Under Secretary Hodel, and we do not think it would.

Senator MURKOWSKI. Is that your understanding, Mr. Wallenstrom?

Mr. WALLENSTROM. Yes; it is. We have, Mr. Chairman, been commenting on most of them in 30 days, and I think we have already got training classes out there for our field people, and we are devising some letters to potential applicants that would alert them to the types of situations we are concerned with so we believe by notifying them up front and getting our people trained, we can handle it.

Senator MURKOWSKI. I think that is the key, to notify them up front. They will know what they have to do to comply. If it takes a season to get the evaluation of data, so be it, but once you get it, then you are telling me you can process it in 30 days and still give it the care and consideration that is necessary for you to carry out the charge?

Mr. WALLENSTROM. Yes; we can.

Senator MURKOWSKI. I have another question for the Commissioner. Although I wasn't in attendance during Commissioner Sheldon's testimony, in your testimony, Mr. Commissioner, you indicated that meetings had been held on more than one occasion and more are planned with the Commission to facilitate the resolution of additional issues. I gather that perhaps not too much progress has yet been made in this area. The meetings have been held, but do you have any suggestions on procedures that might make those meetings more meaningful or perhaps they don't need improvement?

These are interagency meetings, and I recognize that everybody has got considerations, but is there anything that could be done to expedite the meetings?

Commissioner BROADBENT. I think some direction to both us and FERC to try and resolve those issues and report back to you wouldn't hurt us at all.

Senator MURKOWSKI. Well, I think that is the purpose of this hearing basically. The record will reflect that our mutual concern is to try to be more expeditious in the processing while carrying out the responsibility that is delegated to the agencies for the protection of the specific area requirements.

I noted also that in your testimony you indicated that the BLM, is not given the opportunity to review Commission permit and license requests under the Federal Power Act except as a normal intervenor in legal proceedings. In other words, you get involved after the fact. I wonder if that is your best procedure.

Shouldn't you have an opportunity for some input and involvement up front rather than after the fact? It just seems to indicate an extensive period of review.

Commissioner BROADBENT. Especially where you had land that is available for municipal use and you may have mineral leases on it and a provision where they are going to start to do something. In some cases, there may even be some kind of a short-term lease for some kind of a development plan, and those could be proceeding

with BLM at the same time that there is land withdrawn by FERC or a FERC applicant which BLM may not even be aware of. It presents some real problems in multiple use.

Senator MURKOWSKI. Do you feel you need further clarification and direction from Congress on the input of BLM in that area rather than coming in after the fact?

Commissioner BROADBENT. I would think we would, yes, sir.

Senator MURKOWSKI. You would encourage that then. I think it would be appropriate for the Department to bring that formally to the attention of the committee by letter.

Commissioner BROADBENT. We would like to consider, too, after you hear the testimony of the Forest Service, that we might work with them. Their concerns are the same as BLM's and we might be able to bring a joint letter to you from the Forest Service, and the Bureau of Land Management.

Senator MURKOWSKI. I think that concludes my questioning, and I very much appreciate your response. There are other questions submitted by other Senators. Will those be submitted for the record?

Mr. BROWN. Yes.

Commissioner BROADBENT. We will be happy to respond in any way we can.

Senator MURKOWSKI. Thank you, Mr. Commissioner, and Mr. Wallenstrom. We appreciate your testimony. We will proceed with the last witnesses, Mr. Doug Leisz, Associate Chief of the Forest Service, Department of Agriculture. Is that pronunciation correct?

Mr. LEISZ. That is correct, Mr. Chairman.

Senator MURKOWSKI. Thank you. Welcome to the hearing, and we look forward to your testimony, and you may proceed.

STATEMENT OF DOUGLAS R. LEISZ, ASSOCIATE CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. LEISZ. Mr. Chairman, we appreciate your invitation to join the subcommittees' deliberations on the hydroelectric licensing process. The lands of the national forest system are often directly involved in such licensing. We are vitally concerned that all the multiple resources of these lands receive appropriate consideration as directed by the Congress.

We also recognize the importance of development of hydroelectric potential of the water resources on the national forest lands and adjacent lands. As some indication of the amount of activity, there are more than 200 FERC licensed dams on the national forest system, and there are hundreds of applications before us now for consideration. In all, there are some 6,000 applications for licenses, exemptions, or permits involved in the use of national forest system lands or other lands for which USDA is responsible.

Mr. Chairman, at this point what I would like to do is move through the testimony and summarize parts of it if I may and leave the time for questions.

Senator MURKOWSKI. Please proceed, Mr. Leisz.

Mr. LEISZ. I will skip over to page 2 if I may. We are aware of the suggestions made by witnesses appearing at these hearings last fall that conditions imposed by the Secretary of a department

having land management responsibilities on the granting of the license should be subject to overrule by the Commission. In fact, the Commission has held the view it is not compelled to accept conditions prescribed by the Secretary.

We strongly disagree. It is our position that section 4(e) of the act does not grant the Commission the authority to reject or modify the Secretary's conditions, nor do we believe such an authority by the Commission to be desirable since such unilateral action can be detrimental to the total management of the national forest.

There is disagreement between the Commission and the Secretary of Agriculture on this point. It is of increasing concern to the Secretary of Agriculture as the Commission has refused to accept some of the conditions that the Secretary of Agriculture has transmitted and made their own findings in a number of recent cases.

In the case of applications for preliminary permits to be issued pursuant to the Federal Power Act for the purpose of conducting studies and gathering data, the Forest Service usually responds with a "no objection", but asks the Commission to advise the applicant to contact the Forest Service to determine if a Forest Service special use permit is necessary. Fairly strict requirements might be required if the lands in question are within an area of scenic, historical, or environmental significance, or are in areas where the Congress has given specific management direction. There must also be compliance by the Commission and the Department of Agriculture with the National Environmental Policy Act. Before issuing a permit to occupy or use national forest system lands, we prepare a brief environmental analysis, or a more formal environmental impact statement if conditions warrant that.

I should point out that upon acceptance by the Commission of an application for either a preliminary permit or a license, the Federal land is withdrawn for power purposes. This unilateral withdrawal action has been a troublesome issue for us in managing the lands because we are not consistently informed that such withdrawals have been made. There can be and have been serious land use conflicts arising because of that.

The licensing process involves a more formal response. The Commission provides notice to the Forest Service of the application and requests comments. Our response, given on behalf of the Secretary of Agriculture, is often an interim one while the environmental impact statement is under preparation by the Commission. However, we generally request that we participate in the development of the EIS as a "cooperating agency." Most of the time that works quite well.

If upon completion of the environmental impact statement, the decision is made by the Commission to issue a license, the Forest Service issues its permit for the right-of-way to the licensee. It is our policy to waive payment of the land use fee which otherwise would be required of a permittee using system lands if the licensee pays a fee to the Commission.

The Commission has provided for exemptions to licensing. If exempted, a project applicant applies directly to the Forest Service for a permit. This process occurs for small projects particularly where no dam is required. The exemptions are granted under criteria established by the Commission. Upon issuance of a special use

permit, the permittee pays the land use fee directly to the Forest Service. The permit contains appropriate provisions to protect the national forest system lands.

Most of the processes now in operation are fairly efficient and properly serve, we believe, both the applicant and the public. We recognize that delays and conflicts may occur when an application is pending. This can happen because of the various law requirements and because of the particular complexities at an individual site.

One of the laws that we deal with, the National Forest Management Act of 1976, requires the development of land and resource plans for each unit of the national forest system. We fully involve the public in the development of these land and resource management plans which provide for specific resource yields and uses for a decade or more in response to congressionally directed programs for the national forest system lands.

An application for a hydroelectric project permit may conflict with an established plan and may require us to make a careful analysis of the project and to identify alternatives. The point I wish to make is we are guided by the provisions of the National Forest Management Act and other laws, just as the Commission is guided by the provisions of the Federal Power Act. Potential conflicts usually may be resolved through cooperative working relationships between the Commission staff and the Forest Service.

We do see an opportunity and a need to clarify the permitting and licensing process. Section 24 of the Federal Power Act provides that Federal lands included in a proposed project shall be reserved from entry, location, or other disposal upon the filing of any application for a preliminary permit or a license. The lands withdrawn remain reserved until restored to their former status by the Commission or by Congress. This is so even though the project is rejected, may never be built, is built elsewhere, or is built smaller than originally planned. There are several hundred such withdrawals in effect on the national forest system lands. They interfere with efficient management of the national forests.

We recommend your consideration of amendments to the Federal Power Act. First, we suggest the act be amended to provide that a withdrawal is automatically canceled and the withdrawn lands returned to their prior original status if no license application or new preliminary permit has been filed within a reasonable time, say 5 years, after the expiration date of the preliminary permit or immediately upon the denial of the permit by the Commission. Such a removal of the withdrawal would provide that the Secretary of Agriculture notify the Commission of the Department's intent to restore the land to their original status.

The second change deals with annual charges for use of Federal lands. Under the Federal Power Act, the licensee makes annual payments to the United States for Federal lands used in conjunction with a water project. This may include, for example, national forest system land inundated as a result of a dam. In some situations, it may be desirable to waive the annual fee. For example, the licensee may want to make a land exchange with the United States to acquire the inundated land. We have had some cases where this very thing has occurred. In these cases, it would be more beneficial

to the Government to make the land exchange than to receive the annual fee.

When determining whether an exchange is beneficial, it would be necessary, of course, to consider the amount of lost revenues along with the value of the property received. The Federal Power Act now would effectively preclude a beneficial land exchange.

Mr. Chairman, this concludes my summary of my statement, and I would be pleased to respond to any questions.

[The prepared statement of Mr. Leisz follows:]

STATEMENT OF
DOUGLAS R. LEISZ, ASSOCIATE CHIEF
FOREST SERVICE
U.S. DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Energy Regulation
and the
Subcommittee on Water and Power
of the Committee on Energy and Natural Resources
United States Senate

Concerning The Hydroelectric Licensing Process

February 24, 1982

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEES:

We appreciate your invitation to join the Subcommittees' deliberations on the hydroelectric licensing process. The lands of the National Forest System are often directly involved in such licensing; we are vitally concerned that the multiple resources of these lands are not adversely affected. We also recognize the importance of development of the hydroelectric potential of the water resources on and near National Forest System lands. I would like to describe our role in the licensing process when System lands are affected and point out what we see are opportunities for improving the process.

We recognize the Federal Energy Regulatory Commission's lead responsibility in the licensing process. However, section 4(e) of the Federal Power Act states that the issuance of any license that involves the public lands and reservations of the United States must be based upon a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which the reservation was created or acquired. The granting of licenses by the Commission must be subject to and contain such conditions as the Secretary of the Department having

jurisdiction over the reservations considers necessary for the adequate protection and utilization of the reservation. Thus, with regard to National Forest System lands, the Secretary of Agriculture, acting through the Chief of the Forest Service, is formally involved in the licensing process working closely with the Commission in making the required analyses and documentation.

We are aware of the suggestion made by witnesses appearing at these hearings last fall that conditions imposed by the Secretary of a Department having land management responsibilities on the granting of the license should be subject to overrule by the Commission. In fact, the Commission has held the view that it is not compelled to accept conditions prescribed by the Secretary. It is our position that section 4(e) of the Act does not grant the Commission the authority to reject or modify the Secretary's conditions, nor do we believe such authority by the Commission to be desirable since such unilateral action can be detrimental to the management of the National Forests, and to the public that the lands serve.

In the case of applications for preliminary permits to be issued pursuant to the Federal Power Act for the purpose of conducting studies and gathering data, the Forest Service routinely responds with a "no objection" but asks the Commission to advise the permittee to contact the Forest Service to determine if a Forest Service special use permit is necessary or to agree on specific permittee responsibilities while on National Forest System land. Fairly strict requirements might be required if the lands in question are within an area of scenic, historical or environmental significance.

There must also be compliance by the Commission and the Department of Agriculture with the National Environmental Policy Act. Before issuing a permit to occupy or use National Forest System lands, we prepare a brief environmental analysis or, if significant environmental impacts are involved, the more formal environmental impact statement. I should point out that upon acceptance by the Commission of an application for either a preliminary permit or a license, the Federal land is withdrawn for power purposes.

The licensing process involves a more formal response. The Commission provides notice to the Forest Service of the application and requests comments as called for in section 4(e) of the Federal Power Act. Our response, given on behalf of the Secretary of Agriculture, is often an "interim" one while the Environmental Impact Statement is under preparation by the Commission. However, we generally request that we participate in the development of the EIS as a "cooperating agency." In any event, our response at this point will specify the conditions which the permittee must observe to insure adequate protection and utilization of the National Forest System land.

If, upon completion of the EIS, a decision is made by the Commission to issue a license, the Forest Service issues its permit for the right-of-way to the licensee. It is our policy to waive payment of the land use fee, which otherwise would be required of a permittee using System lands, if the licensee pays a fee as part of the Commission's annual license.

The Commission has provided for exemptions to licensing. If exempted, a project applicant would apply directly to the Forest Service for a permit. This process would happen for certain small projects, particularly where only diversion but no dam is necessary. Exemptions are granted under

criteria established by the Commission. In these cases we prepare the environmental analysis and otherwise act on the application. Upon issuance of a special use permit, the permittee would pay a land use fee based on the fair market value of the use. The permit would contain appropriate conditions to protect the National Forest System lands.

In general, we believe the process now in operation is efficient and properly serves both the applicant and the public. We recognize that delays and conflicts sometimes occur when an application is pending. This can happen because NEPA and those laws which govern the National Forest System prescribe a deliberate, careful approach to evaluating uses of the land and resolving potential conflicts between those uses. In particular, the National Forest Management Act of 1976 requires the development of land and resource plans for each administrative unit of the National Forest System. We fully involve the public in the development of these land and resource management plans which would ultimately serve as the basic management guide.

An application for a hydroelectric project permit may conflict with an established plan, and may require us to make a detailed analysis of the project and the plan. The point I wish to make is that we are guided by the provisions of the National Forest Management Act and other laws just as the Commission is guided by the provisions of the Federal Power Act. I do not see this as a conflict; rather, that there is the assurance that the public's interest in the National Forest System is protected by existing laws.

We do see an opportunity to clarify the permitting and licensing process. Section 24 of the Federal Power Act provides that Federal lands included in a proposed project shall be reserved from entry, location, or other

disposal upon the filing of any application for a preliminary permit or a license. The lands withdrawn remain reserved until restored to their former status by the Commission or by Congress. This is so even though the project may never be built or is built elsewhere or is built smaller than originally planned. There are several hundred such reservations in effect on National Forest System lands. We expect many more in the future. Management of these lands is impaired by this restriction. Multiple-use resource development or the exchange of these lands cannot occur unless and until the Commission acts.

We recommend your consideration of amendments to the Federal Power Act. First, we suggest the Act be amended to provide that a withdrawal is automatically cancelled and the withdrawn land returned to its prior original status if no license application or new preliminary permit has been filed within a reasonable time, say after 5 years, after the expiration date of a preliminary permit or the denial of a permit by the Commission. Such a removal of the withdrawal would provide that the Secretary of Agriculture notify the Commission of the Department's intent to restore the lands to the original status. The Commission would have a certain time to respond to this notification. We believe this proposal would have the desirable effect of eliminating the unnecessary impediments to our management of the National Forests. We would not seek to impose such a requirement on withdrawals now in effect, but only to those withdrawals which would occur after enactment on which no project materializes. We would continue to resolve those withdrawals now in effect through administrative means working with the Commission.

We have discussed this proposal with the Department of the Interior and believe we have their concurrence that it would be an appropriate amendment.

A second change deals with annual charges for use of Federal lands. Under the Federal Power Act, a licensee makes annual payments to the United States for Federal lands used in conjunction with a water project. This may include, for example, National Forest System land inundated as a result of a dam. In some situations it may be desirable to waive the annual fee. For example, a licensee may want to make a land exchange with the United States to acquire the inundated land. In this case, it would be more beneficial to the Government to make the land exchange than to receive the annual fee. When determining whether an exchange is beneficial to the United States, it would be necessary, of course, to consider the amount of lost revenues along with the value of property received. The Federal Power Act now would effectively preclude a beneficial land exchange.

While we do not expect the Congress to endorse any particular land exchange, we do believe it would be desirable to remove the legal obstacle so that land exchanges can be made when they are clearly beneficial to the United States. Therefore, we would support legislation allowing the Commission to waive the annual fees, and we understand the Commission is preparing legislation that will include such a waiver provision.

Mr. Chairman, that concludes my prepared statement. I would be happy to respond to the Subcommittees' questions.

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Senator MURKOWSKI. Thank you, Mr. Leisz. You indicated I believe that you had about 200 projects in the national forest and 6,000 applications pending?

Mr. LEISZ. Let me clarify that point. There are over 200 FERC licensed dams within the national forest system. There are about 300 applications for power development before the Forest Service at this time. In all types of permits, including transmission lines, power generation and so forth, we have a total of over 6,000 FERC permits involving national forest system lands.

Senator MURKOWSKI. Out of the 200 applications that are before you now, what is the average processing time?

Mr. LEISZ. That includes small projects as well.

Senator MURKOWSKI. That have come in over what period of time?

Mr. LEISZ. Well, this was the inventory at about the first of the year.

Senator MURKOWSKI. What is your average processing time would you anticipate?

Mr. LEISZ. It varies considerably, depending upon the complexity of it, but rarely at the present time are we responding within the 30-day period.

Senator MURKOWSKI. Rarely, within the 30-day period?

Mr. LEISZ. Yes. It is usually over that time period.

Senator MURKOWSKI. What would you say would be an average norm for processing, recognizing that there are extreme cases, but at some point in time there is an average which you could estimate.

Mr. LEISZ. Mr. Chairman, I would be pleased to make somewhat of an educated guess. I have been involved in the process, but I would like to correct the record if I find that I am considerably off target if I may do that?

Senator MURKOWSKI. Surely.

Mr. LEISZ. My guess would be in the range of 2 to 3 months.

Senator MURKOWSKI. Has there been any noticeable increase in the processing time as a consequence perhaps of policies that have been in evidence that the Department of Interior—not that there is necessarily any overlap, but we heard the testimony of Commissioner Broadbent with regard to the policy of 30 days. I am wondering what the policy generally is, or is there a formal policy at the Department of Agriculture?

Mr. LEISZ. Well, we do have a policy of responding much more expeditiously than we have been able to. We have had a tremendous avalanche of applications involved with mineral leasing, geothermal, oil, gas, coal, and water licensing, and we have tried to respond to them, and to increase our ability to respond quickly to the applications.

Senator MURKOWSKI. Would you be able to provide for the record a breakdown of those 300 applications as to just what classifications they fall under?

Mr. LEISZ. These are all hydroelectric.

Senator MURKOWSKI. All right. Could you give us an average time as to when they were submitted and when you expect to complete the process, on an average so that we get some idea of the time involved because the purpose of this hearing is to expedite the

licensing procedure, and of course, those occurring in national forests are applicable in this regard, and I think bear some scrutiny.

May I ask when the last project was not only licensed but actually built or construction started or financial evidence that it would at least become a reality occurred within the jurisdiction Forest Service?

Mr. LEISZ. I would have to provide that for the record.

[Subsequent to the hearing Mr. Leisz provided the following:]

Calendar year 1981

Applications reviewed	1804
Projects that would affect NFS lands (41 percent of total)	738
Comments submitted to FERC:	
Where NFS lands would be affected (65 percent of those on NFS lands) ...	479
Other lands where USDA has an interest (5 percent of those on other lands)	58
Total (30 percent of total)	537
Average processing time (days):	
From date of notice to date Forest Service receives	15
To process	94
In return mail to FERC (estimate)	5
Total (3.8 months)	114

Senator MURKOWSKI. Have several occurred in the past 3 or 4 months or has it been 1 year since we have had one?

Mr. LEISZ. It is very active. It is a very active thing.

Senator MURKOWSKI. Where is this occurring?

Mr. LEISZ. In California there are more than 100 projects existing that are up for relicensing and as those are relicensed, there are new provisions incorporated in many of those, either to expand or to change facilities.

Senator MURKOWSKI. These are existing facilities that require relicensing?

Mr. LEISZ. Yes. They are required to go through the license amendment process, and we also are currently processing a number of the exempted proposals that we are handling fully ourselves, of course.

Senator MURKOWSKI. How many are new? I am interested in encouragement of a greater degree of energy independence through hydrogeneration. Are we talking about some new projects?

Mr. LEISZ. Oh, yes. Almost all of the 300 applications that I am talking about that were filed would be for new projects.

Senator MURKOWSKI. How many of them become a reality? How many did we have last year say that actually—

Mr. LEISZ. Were processed through?

Senator MURKOWSKI. Yes. We both recognize, as has been pointed out in the testimony a number of times, there is a great deal of speculation going on in association with this development and that is not necessarily in the best interest of trying to get more hydro-generating capability. But the opportunity is there, and that is the way it is. What I am really interested in knowing is just how many legitimate projects we have or is it really just speculation?

Mr. LEISZ. No. We do have a number of very positive projects. There is one very large one that comes to my mind that I am quite

familiar with involving the Pacific Gas & Electric Co. The Helms project in the Sierra National Forest is increasing their ability to generate power, and is near completion at this time.

Senator MURKOWSKI. We ask that you submit for the record an outline of those that you have processed in the past. Let's look at them with the idea of making a general analysis of how much obvious speculation is occurring, and whether it is in the best interest that you go ahead with the processing of these when somebody is just going to go out and try to finance them and sell off the lease and generate some income.

[Subsequent to the hearing Mr. Leisz provided the following:]

CALENDAR YEAR 1981, FERC PROJECTS

	License				Short-form license	Transmis- sion line	Exemption	Preliminary permit	Total	Retrofit ¹	Wild and scenic
	New	Amend	Renew	Transfer							
Applications reviewed:											
NFS lands.....	18	19	1	.....	38	6	2	25	662	733	79
Other lands.....	62	15	.....	3	80	28	3	110	850	1,071	94
Total.....	80	34	1	3	118	34	5	135	1,512	1,804	173
Permits/license issued:											
NFS lands.....	12	12	1	1	26	.....	2	15	177	220	.....
Other lands.....	42	30	.....	1	73	2	3	57	475	610	.....
Total.....	54	42	1	2	99	2	5	72	652	830	.....
Permits/exemptions denied/surrendered:											
NFS lands.....	.....	.....	.....	.....	.....	.....	1	5	75	80	.....
Other lands.....	.....	.....	.....	.....	.....	.....	.....	8	342	351	.....
Total.....	.....	.....	.....	.....	.....	.....	1	13	417	431	.....

¹ Retrofit—Project utilizes an existing water project, such as, Bureau of Reclamation/Corps of Engineers, dams, etc.

¹ Retrofit—Project utilizes an existing water project, such as, Bureau of Reclamation/Corps of Engineers, dams, etc.

Senator MURKOWSKI. I don't know that we should set up policing power necessarily, but on the other hand, there has got to be some happy medium in here. I am sure that you people who are involved in the process have a pretty good idea of those that are economically viable and those that are obviously being put together on the basis of speculation.

Mr. LEISZ. One of the comments that I had heard here today that I think we could support would be some kind of filing fee at the time of application rather than waiting until the license time for payment. This would in fact tend to cause people to put up money with their proposal in the initial stage rather than waiting until they apply for license.

Senator MURKOWSKI. Is this something that might be discussed in your interagency meeting with FERC?

Mr. LEISZ. I think it could be. FERC actually suggested that, and I think that would help.

Senator MURKOWSKI. I think it would be very helpful, and I would ask on behalf of the committee that you direct that kind of an inquiry among your associated agencies to see if you can come up with some suggestions for the committee to eliminate and reduce the redundancy associated with mass speculation if in fact that situation exists. I don't want to belabor that too long, but I think we are both concerned about a costly process that has no likelihood of any additional hydrogeneration.

This overlap of authority between your Agency and FERC I guess has never been totally spelled out, and you therefore agree to disagree from time to time. I suppose you go in and shut the door and try to come out with a consensus and sometimes that works and sometimes it doesn't.

Are you looking for any further direction in that area? Would you just as soon be left alone to settle your own differences?

Mr. LEISZ. I hope that we can settle it. We do have some continuing differences on that point. We think that section 4(e) of the Federal Power Act is very clear, and that it requires the Secretary of Agriculture to be allowed to identify the conditions to be incorporated.

Senator MURKOWSKI. FERC doesn't agree with you?

Mr. LEISZ. No, they do not. In fact, it has been very disappointing to us. In a few recent cases they have ignored those conditions of the Secretary of Agriculture.

Senator MURKOWSKI. And your remedy for that is specifically what? That we institute a change?

Mr. LEISZ. In at least one case, we did file an appeal, but an appeal with FERC is held within their own appellate system.

Senator MURKOWSKI. That doesn't work in 30 days?

Mr. LEISZ. It does not work in 30 days, and does not seem to be a completely objective process of review.

Senator MURKOWSKI. Maybe we should ask FERC to submit for the record why they can't process their interagency differences within a 30-day period. Well, I will ask FERC then to do that.

I am always a bit leery, although I haven't been around here long enough to formulate opinions that are too cast in concrete, but I'm not sure that you are necessarily better off with agencies coming up and dictating how they have to get along with the other

agencies. I guess the committee will keep an open mind on that. If it gets totally out of hand, we will have to do something.

Mr. LEISZ. Mr. Chairman, I would not want to leave the impression that we have a continual battle going on with FERC. In fact, we find agreement in most areas of operation, and I think the process has worked quite well with tremendous workload increase for all those concerned in trying to process and respond quickly to new power generation.

Senator MURKOWSKI. I understand that, and the Chair does not take your remarks out of context as far as your ability to work with FERC is concerned. I understand that.

I think we have covered the latter part of your testimony as well. I think that concludes the questions that I had.

I want to thank you very much, Mr. Leisz, for your testimony and your candid remarks, and we will be interested in seeing what kind of a response we get from FERC in 30 days.

Is there anything further? The record will be open for a period of 2 weeks. Any other announcements?

Mr. BROWN. No.

Senator MURKOWSKI. This basically concludes this hearing. We thank you.

The hearing is adjourned.

[Whereupon, at 4:10 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Committee Questions

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

OFFICE OF THE COMMISSIONER

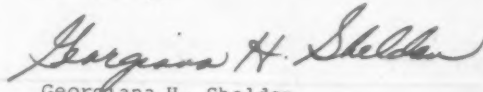
March 25, 1982

Honorable Frank H. Murkowski
Chairman
Subcommittee on Water and Power
Committee on Energy and Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

In response to your letter of March 15, I enclose our responses to your follow-up questions to my February 24 testimony before the Subcommittee on Energy Regulation and the Subcommittee on Water and Power. I will be happy to answer any further questions that you or the other Members of the Committee may have.

Sincerely,



Georgiana H. Sheldon
Vice Chairman

Enclosures

1. In your February 24 testimony, you argued rather forcefully for legislation which would establish the FERC as the "lead agency" for purposes of issuing hydroelectric licenses. If Congress were to grant this authority, would the FERC be able to adequately address environmental concerns? How would this be procedurally accomplished, once another "commenting" agency has made its recommendations?

The FERC has taken many steps to insure that environmental concerns are identified from the earliest moment of a proposed agency action and throughout the agency review and decisionmaking process. New rulemakings during the past few years have almost completely revised the requirements for applications for preliminary permits, licenses, and exemptions. See 18 C.F.R. Part 4 (1981). In the case of license applications, the regulations require applicants to contact relevant Federal, state and local environmental agencies about their proposed project before filing their application. Along with a description of the present environment, the impacts that would occur from the project and the proposed mitigation measures, the applicant must also include in that application information demonstrating the pre-filing consultation process with agencies and the agency responses thereto. After acceptance of an application, the Commission issues public notice and invites agency comments, protests, or intervention. These submissions are sent to the applicant for its response. All comments and responses are considered and evaluated before any decision is made. If a license is issued, numerous conditions are attached in order to protect the environment. These conditions are made sufficiently open-ended so that future changes in circumstances will permit the Commission, on its own or at the request of another Federal agency or other interested entity, to take whatever steps may be needed to protect the environment at that time. The exemption process is similar but on a faster track. As you know, the exemption legislation further provides that Federal and State fish and wildlife agencies can impose mandatory conditions for inclusion in exemptions. The preliminary permit ensures that no environmental damage will occur during the permit period and also that all necessary environmental studies in preparation for a license application will be done after consultation and coordination with environmental agencies.

The Commission's present procedures allow many opportunities for any interested agency, organization, or individual to provide whatever information or views that it may have on a pending application before the FERC. "Lead agency" status would not affect these opportunities. Under present procedures, agencies or interested entities may appeal Commission decisions whenever they believe the Commission has erred. "Lead agency" status would also not affect the appeal process. We see no need for major changes in this process but of course are open to suggestions at any time. The Commission has taken and will continue to take its responsibility to consider the environmental implications of its actions seriously.

2. Many parties are opposed to this "lead agency" concept because of FERC's perceived insensitivity to environmental concerns. Just for the record, how many license applications has the FERC actually rejected in the last 5 years because of environmental objections?

The Commission and its staff are sensitive to environmental concerns. That they are not is a misperception.

Before filing applications for license, applicants must conduct feasibility studies. These studies must be filed with the applications. The studies examine not only the engineering feasibility of the proposed projects, but also the expected environmental impacts and possible measures for mitigation. Consultations with Federal, State, and local environmental agencies are integral and mandatory portions of these studies. The studies give applicants opportunities to decide whether to proceed with preparation of license applications or to terminate further consideration of the projects if they do not appear economically or environmentally feasible.

Only about one-half of the preliminary permits for unconstructed projects become license applications. An extensive environmental review is made by FERC staff before a license application is presented to the Commission. Some applications for hydroelectric projects have been withdrawn after filing, when it became apparent during staff's processing that the environmental problems were insurmountable. Since license applications for new projects contain many special conditions to provide for environmental protection, it has not been necessary for the Commission to deny any license applications for environmental reasons.

3. Is the FERC still actively pursuing a Memorandum of Understanding with either the U.S. Fish and Wildlife Service or the Forest Service? In FERC's view, what are the major impediments to achieving such an agreement?

While no discussions are currently being held to obtain Memorandums of Understanding with the Forest Service or the U.S. Fish and Wildlife Service, we would welcome such an opportunity. It should be noted that, with respect to the issuance of preliminary permits on Forest Service lands, it is now routine to include in such permits a condition requiring the Permittee to negotiate a Memorandum of Understanding with the local Forest Supervisor within 90 days of issuance of the permit for the purpose of conforming activities in the National Forest to those that are acceptable to the Forest Service. A copy of this permit article is attached.

The major impediment to achieving a general Memorandum of Understanding with either the Forest Service or the Department of Interior (including its component U.S. Fish and Wildlife Service) is a fundamental disagreement among the agencies over the extent of FERC authority in issuing licenses and permits. Current problems arise not because of an unwillingness to cooperate, but rather because of each agency's belief that it, and not the other, has been given exclusive authority by the Congress to resolve certain environmental issues related to hydroelectric development. When lands or reservations of the United States are to be occupied by a project, then under Section 4(e) of the Federal Power Act the Commission must consult with the responsible Departments, commonly Interior and the Forest Service. These Federal agencies are reluctant to forego what they feel are their statutory prerogatives. Negotiations, begun in the mid-1970's, broke down because these agencies wanted the FERC to delegate to them responsibilities for making final decisions on matters within their respective areas of interest. The FERC felt that such delegation is not permissible under the Act and would preclude the FERC from making decisions based on the comprehensive development concept under Section 10(a) of the Federal Power Act.

Article 11. Prior to undertaking any investigation work under the preliminary permit on National Forest land within the proposed project boundary, the Permittee shall: consult with the Forest Supervisor, Stanislaus National Forest, Sonora, California 95370, or his designated representative, as to reasonable requirements relative to field surveys and investigations; shall cooperate with the Forest Service during the term of this permit to develop a plan for alleviation of damage to, and achieving maximum utilization of, National Forest resources insofar as they are affected by any studies and investigations conducted pursuant to this permit; and shall enter into a memorandum of agreement with the Forest Service pertaining to requirements for fire prevention and control, and for alleviating injury to or destruction of Forest Service lands, resources, buildings, bridges, roads, trails, and other improvements of properties of the United States. The term of that memorandum of agreement shall be for the term of the preliminary permit and until final Commission action on

any application for license for the proposed project. Within 90 days from the date of issuance of this order, the Permittee shall file a copy of the memorandum of agreement for the Commission's information. If the Permittee and the Forest Service have not been able to agree on the terms of a memorandum of agreement, then no later than that date the Permittee shall file, with a copy to the Forest Service, a request for resolution by the Director, Office of Electric Power Regulation, of the terms remaining in dispute. The request must include all the terms on which there is agreement and specify each term proposed by the Forest Service with which the Permittee disagrees, the reason for disagreement with that term, and the Permittee's counter-proposal, if any.

4. It is my understanding that a considerable amount of controversy exists over what actually constitutes an "existing dam" for purposes of qualifying for an exemption from licensing, as prescribed by section 408 of the Energy Security Act and Orders 106 and 202 of the FERC's rules. What exactly is the nature of this controversy? How much leeway presently exists in defining a structure as an existing dam under the case-by-case exemption method (Order 106), and under the categorical exemption criteria (Order 202)? In FERC's opinion, does the definition of "existing dam" require additional statutory clarification?

It is apparent that some confusion has existed with regard to the definition of an "existing dam" for the purposes of exemption under Section 408 of the Energy Security Act, which amended the Public Utility Regulatory Policies Act. The primary controversy centers on the question of how much construction at a project may be considered "restoration", as opposed to the substantial construction of a new dam. Order 106 (13 FERC ¶51,116) as modified by Order 202 (18 FERC ¶61,039) addresses this issue in the Comment Analysis and Order 106-A (17 FERC ¶61,071) further clarified two points. Specifically, Order 106-A stated: (1) the Commission will not consider as an existing dam for exemption purposes a breached dam at which little or none of the original impoundment continues to exist, and (2) when some impoundment remains, several factors will be taken into account when determining whether there is an existing dam, including: the degree to which any reconstruction will raise the level of the existing impoundment; the effects on the environment of refilling the reservoir; and the effects of reconstruction on migratory, fish populations. Under this test, some discretion exists in determining whether a structure is an existing dam. Since the definition has been clarified by Order No. 106-A, there appears no compelling reason to modify the statute.

5. Several witnesses who testified before this Committee stated that the FERC licensing process should afford more protection to dam site owners. For the record, what actions has the FERC taken to establish a so-called "owner preference" for site owners? In FERC's opinion, is additional statutory clarification of this concept needed at this time?

I am advised by staff that the issue of whether owners of existing dams or dam sites should be favored when competing with non-owners for preliminary permits will be considered by the Commission in the context of several cases where one of the competing parties holds some type of proprietary interest.

Section 7 of the Federal Power Act, 16 U.S.C. §800, and the regulations promulgated thereafter (18 C.F.R. 4.33), require the Commission to award the permit to the applicant proposing a project best adapted to a comprehensive plan of development. If the Commission cannot determine at the preliminary permit stage that one project is better adapted than its competitor's, and the municipal preference is not applicable, then the permit is awarded to the first-to-file applicant.

The types of proprietary interest that have emerged thus far are:

- (1) one applicant has purchased water storage in a Corps of Engineers' or Bureau of Reclamation project, and has a contract with the federal entity as to how that water is released;
- (2) One applicant owns part or all of the necessary land and water rights at a proposed dam site; and
- (3) One applicant owns some or all of the existing facilities (dam, canal, etc.) that would be classified as project works and thus included in any license eventually issued.

These issues, in the above factual configurations, will be separately scheduled for the Commission's agenda in the relatively near future.

6. On page 27 of your written testimony, it is argued that very few States have either the financial resources or the staff necessary to take over the Federal licensing function. For those States which do have the interest and capability to administer a licensing program, would you still oppose transferring this function to them? If so, why?

Section 4(e) of the Federal Power Act specifically charges the FERC with jurisdiction over projects located on streams or other bodies of water on which there is any effect on interstate commerce. This is a necessary supra-State function. There is no philosophical problem with State licensing of projects which are mainly intrastate in nature, but very few projects are on rivers entirely within the boundaries of one State. The establishment of State programs for these intrastate rivers is questionably cost effective when a viable Federal program already exists.

7. What are FERC's current plans for raising filing fees for licenses and exemption applications? Could a performance bond or some other test of applicants' capabilities be used as well to weed out the so-called speculators?

The primary purpose for creating filing fees for all types of applications filed under Part I of the Federal Power Act (FPA) is not to discourage speculators, but to recover the agency's hydroelectric program cost. The hydro program is basically self-sustaining. At present, licensees are assessed annual charges to reimburse the Federal government for the cost of administration of Part I of FPA and for the use of Federal lands, reservations, and other dams and facilities. Imposition of filing fees would more equitably spread the cost of the applications processing portion of the hydro program among all applicants.

Until recently, there were very few preliminary permit applications per year as compared to the number of outstanding licenses. The cost of processing these permits was insignificant compared to license issuance and administration. Today, a large portion of the hydro budget is devoted to processing and administering preliminary permits and the newly created exemptions from licensing. Neither of these types of applicants pay any filing, issuance, or annual fees. Licensees have been forced to pay for the administrative cost of permit and exemption processing.

The proposed filing fees would assess each applicant a fee which approximates, but does not exceed, the cost of processing that type of application. All filing fees collected in a year would be deducted from the amount to be paid annually by licensees, thereby reducing their annual charge obligation. As a secondary benefit, the filing fees may discourage some speculators from filing too many applications.

8. Does the FERC have the authority to initiate a filing fee requirement for preliminary permit applications?

The FERC is currently answering this question. It appears to have the authority to initiate a filing fee requirement for preliminary permit applications, as permitted under the Independent Offices Appropriations Act (IOAA) provided the fee meets the particular guidelines, set forth by the courts, to date. 1/

1/ It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency *** to or for any person ***, except those engaged in the transaction of official business of the Government, shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation to prescribe *** therefor such fee, charge, or price, if any, as he shall determine, *** to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts: Provided, That nothing contained in this section shall repeal or modify existing statutes prohibiting the collection, fixing the amount, or directing the disposition of any fee, charge or price: Provided further, That nothing contained in this section shall repeal or modify existing statutes prescribing bases for calculation of any fee, charge or price, but this proviso shall not restrict the redetermination or recalculation in accordance with the prescribed bases of the amount of any such fee, charge or price.

The IOAA sets forth some general policies for developing an equitable and uniform system of charges for particular government services and property. It covers initially all federal activities which convey special benefits to recipients above and beyond those accruing to the public at large and proposes reasonable charges to each identifiable recipient for a measurable unit or amount of government service or property.

As a result of two Supreme Court decisions, *Federal Power Commission v. New England Power, et al.*, 415 U.S. 345 (1973) and *National Cable Television Association Inc. v. United States*, 45 U.S. 336, 1973, and numerous lower court decisions ^{2/} filing fees for preliminary permits may be levied, provided the following guideline and standards are met:

- (1) the Commission must be able to identify specific application processing activities which justify the fee;
- (2) there must be an "identifiable recipient" of special benefits;
- (3) no charge may be made for protective services rendered to the general public but only for the value the recipient receives;

^{2/} *Electronic Industries Association v. FCC*, 554 F.2d 1109, 1116 (D.C. Cir. 1976)(EIA).

Mississippi Power & Light Co., v. United States Regulatory Commission, 601 F.2d 223 (5th Cir. 1979). The Court in this case upheld fees rules issued by the NRC because the rule complied with EIA and National II.

See also, *Colorado Interstate Co. v. FPC*, 324 U.S. 581, 589 (1945) (allocation of costs is not a matter for the slide rule);

Aeronautical Radio, Inc. v. United States, 335 F.2d 304 (7th Cir. 1964).

National Association of Broadcasters v. Federal Communications Commission 554 F.2d 1118 (D.C. Cir. 1976).

Capital Cities Communications Inc. et al., v. Federal Communication Commission, 554 F.2d 1135 (D.C. Cir. 1976).

National Cable Television Association Inc. v. Federal Communications Commission, 554 F.2d 1094 (D.C. Cir. 1976). (National II).

- 3 -

- (4) that the methodology used by the Commission to account for expenditures are equitable, sufficient and a reasonable appropriation of the attributable cost,
- (5) the fees must be supported by a clear statement of a particular service or benefit rendered, and must not be retroactive;
- (6) the Commission must not charge a fee for any activities that are not required to be undertaken; and
- (7) the costs assessed may include a pro-rata share of any expense for regulatory activities which are necessary in order to grant such authority, but cannot include those expenses independently required to protect the public.

9. What is the present FERC policy with respect to relicensing of existing dams? In your opinion should a first right of refusal be given to current licensees?

Generally, in selecting among competing applicants, the Commission applies the public interest standard of Section 7(a) of the Federal Power Act. It chooses the applicant whose plans are best adapted to the public interest in its broadest sense. In the event of a tie, Section 7(a) provides that the Commission shall give preference to states and municipalities.

More specifically, Section 7(a) guides the Commission's decision in selecting a licensee from among competing applicants. Section 7(a) applies to relicensing proceedings as well. It describes two preferences or standards depending on whether the applicants are states or municipalities. If there is a state or municipal applicant and if the applicant's plans are equally well adapted to those of a non public applicant, then the Commission is directed to give the state or municipality preference. This preference operates as a "tie-breaker" for equally well adapted plans. The second preference or standard operates when all applicants are states or municipalities or when no applicants are states and municipalities. In this case the "tiebreaker" does not exist. The Commission may select the applicant whose plans are best adapted.

In comparing proposals -- regardless of whether the tie-breaker applies-- the Commission must compare both physical and non-physical aspects of the plans. As stated in Opinion No. 88, City of Bountiful, et al., 11 FERC ¶61,337 at 61,735 (June 27, 1980), the Commission's decision must take into account the public interest in its broadest sense. Opinion No. 88 specifically commented on these public interest aspects. Included in the Commission inquiry would be consideration of physical and technical factors as well as consideration of broader social impacts such as economic costs and benefits, the distribution of the benefits of hydropower, and similar pertinent social impacts. Moreover, Opinion No. 88 noted that the public interest implication of its relicensing decision can be even more complex than for initial licenses. A Commission choice between applicant for successor licenses (relicensing) may result in reallocating the benefits of water power resources. And the Commission noted that transfer itself may have some effects that could possibly be disruptive. Finally, as the Commission

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recognized in Opinion No. 88, relicensing decisions may have important implications for the concentration and distribution of the benefits of hydropower. Part I of the Federal Power Act -- the source of the Commission hydroelectric jurisdiction -- was an outgrowth of a widespread belief that had a basic tenet that the benefit of hydropower should be spread widely. A basic goal of the act is that these benefits be enjoyed by as much of the public as possible. As Opinion No. 88 also noted, the Federal Power Act does not provide a per se relicensing preference in favor of the original licensee.

10. Is it your understanding that Congress intended two separate site charges—one by Interior and one by FERC—to be imposed by the United States for the use of the same government-owned facilities?

Generally, it is my understanding that Congress intended that only the FERC would have the authority to license hydro projects and assess annual charges for the use of government dams and facilities. However, such annual charges imposed by Section 10(e) of the Federal Power Act are distinct from the repayment of government grant, and loans. Therefore, a project licensee, paying annual charges under Section 10(e) of the Federal Power Act, is still required to repay monies borrowed under Federal Reclamation laws.

More specifically, the Federal Energy Regulation Commission (Commission) has exclusive jurisdiction over the development of all hydroelectric project subject to its jurisdiction. As part of its exclusive jurisdiction, the Commission is empowered under Section 10(e) of the Federal Power Act to assess annual charges for the use of government dams. The purpose is to reimburse the government for a benefit conferred on the licensee.

The Bureau of Reclamation does not appear to have separate authority to assess site charges for the use of reclamation government dams under the Reclamation Act of 1902, or any amendments or supplements thereto. Language in some sections of the Reclamation Act allow for the collection of monies, but not an annual site charge. For example, Section 9(c) of the Reclamation Project Act of 1939 authorizes the Secretary to lease power privileges in connection with the operation of any project or project division. However, this would apply only to a lease or lessee relationship which does not exist when a nonfederal developer obtains a FERC license to operate, construct and maintain a facility at a Bureau Dam. Similarly, the Reclamation Act provides for the repayment of government loans for construction by irrigation or public agencies. 43 U.S.C. §421(a)(b). However, such repayments would not constitute a site charge similar to an annual charge by the FERC. 1/

1/ In certain cases the Commission has found that the charges paid by the licensee are the equivalent of annual charges for recompensing the United States for the use of the dam. In these cases the Commission has approved these charges in lieu of annual charges payable to the United States. Idaho Power Company, Project No. 2736 (Nov. 5, 1976).

11. Do you believe that it is going to be necessary for Congress to resolve the "turf battle" between FERC and Interior?

It is not absolutely necessary, but it would certainly establish a finality that negotiated Memorandums of Understanding cannot achieve.

12. If both FERC and Interior impose a site charge for the use of the same government-owned facilities, does this not thwart the intent of Congress to encourage non-federal development of power resources?

The imposition of annual charges for the use of a government dam or other facility by both the FERC and the Bureau of Reclamation, if sufficiently large, could seriously reduce the economic feasibility of a project and would have the effect of discouraging hydropower development of those projects constructed by the Bureau of Reclamation. Section 10(e) of the Federal Power Act prescribes in part "... the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission . . . , and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, ..." The policy concerning annual charges should reflect the intent of the Congress as specified by the Federal Power Act. It is clear that the FERC must assess such a charge under the Act.

13. If a non-federal developer of a small hydro facility develops a power site without cost or expense to the United States, do you consider a charge equal to "one-half of the net benefits"--or "one-half of the net revenues"--to be a reasonable charge?

Pursuant to Section 10(e) of the Federal Power Act, the Commission's current methodology is to assess an annual charge according to the "sharing-of-the-net-benefits method." As the Commission applies it, this method involves calculating the difference between the cost to the licensee of developing power at the proposed hydroelectric project and the hypothetical cost to the licensee to obtain an equivalent amount of power from the least expensive alternative. This difference is the net benefit to be derived from developing the power potential of the government dam. Half of this figure is then assessed as the annual charge for the use of the government dam, thus dividing the value of the net benefit equally between the licensee and the United States. The annual charge by this method is assessed when the net benefit occurs.

A "sharing of net revenues" formula is not used today. Under such a formula, the question arises of what the fee would be when the net revenue is zero. Generally, the value under the Commission's formula will be less than a sharing of net revenues method.

The Commission's staff is currently completing a proposed rulemaking which, among other things, would revise and clarify the Commission's methodology in fixing annual charges for the use of government dams. The rulemaking will address the 50 percent of "net benefit" method currently used by the Commission, along with alternative methods. The Commission's mandate to establish such charges is in Section 10 of the Federal Power Act. It requires the FERC to set a reasonable annual charge to recompense the U.S. for use of the dam, while avoiding price increases to power consumers by such charges.

14. If FERC imposes a charge equal to one-half of the benefits, and Interior imposes a charge equal to one-half of the net revenues, what incentive remains for a non-federal developer of small hydroelectric facilities to develop power sites?

Industry representatives have informed us that very little incentive remains by the imposition of dual charges. One area of concern by developers is the need to have a clear knowledge of what charges will be assessed prior to development of the project for purposes of analyzing financial feasibility, ultimately resulting in an estimate of economic success. The Commission staff is reevaluating its annual charge policy. It is considering the need for up-front knowledge of what the annual charge will be for purposes of financing, the definition of a reasonable charge, and possible acknowledgement, as credits, any licensee payments for the cost of the government dam or other facility related to the development of hydropower.

15. In many situations where an irrigation district is financing the construction of a small hydro facility by issuing long-term bonds, until the bond indebtedness is retired, the net return is less than one half of one percent. Imposition by FERC or Interior of a charge equal to one half will reduce the districts' return to one quarter of one percent.

(a) In your determination of a "reasonable charge", do you take into consideration the percentage of return on a non-Federal developer's invested capital?

(b) How can a "reasonable charge" be imposed without taking into consideration a reasonable return on capital invested by a non-Federal developer?

(c) In some cases, the Federal site charge is contractually agreed to be paid by the purchaser of the power to be produced by an irrigation district, the purchaser usually being a municipality in need of an additional source of energy. Does this not substantially increase the cost of power to the ultimate consumer -- and does not 10(e) of the Federal Power Act provide that the "Commission (FERC) shall seek to avoid increasing the price to consumers of power by such charges"?

These questions require an explanation of the method, called the "sharing of the net benefits" method, by which the Commission calculates annual charges. The annual charge, equal to one half of the net benefit to the licensee for use of the government dam, is computed as follows:

(1) estimate the annual costs of the powerhouse development to the licensee; (2) estimate the gross annual benefit of the powerhouse development to the licensee; (3) subtract the annual costs from the annual benefit to obtain the net annual benefit; and (4) share the net annual benefit equally between the United States and the licensee.

The estimates are for the first year of operation. The estimated dollar amount is written into the license and becomes the annual charge. As currently applied, the "benefit" in step (2) is the difference between the licensee's annual cost of operating the project and the estimated annual cost of utilizing the least expensive equivalent energy alternative.

- 2 -

(a), (b) The percentage of return on a non-Federal developer's invested capital is included in the net benefit calculation, in that if the licensee has a return on capital, the annual cost of operating the project will include it. Municipalities, including irrigation districts, do not have equity financing and thus do not have a return on capital.

(c) There have been cases in which a power purchaser has agreed to pay the annual charge. If the charge paid by the purchaser is passed along to the purchaser's ratepayers, it does indeed increase the cost to consumers. The Commission is aware of its statutory obligation to seek to avoid such an increase. Section 10(e), however, also gives the Commission a statutory obligation that the same charge recompense the United States "for the use, occupancy, and enjoyment of its lands or other property." The net benefit method, by comparing the cost of obtaining power from the project with the cost of the next best alternative, collects for the taxpayer one half of the difference between the two. Consumers pay more than they would without the charge. But, because of the one half, consumers always pay less than the cost of any alternative energy supply. The net benefit method shares the value of the Federal resource between consumers and taxpayers.

16. Heretofore, the purchaser of power (in most cases a municipality) has agreed to pay the Federal site charge imposed by FERC. However, the power purchasers are becoming more sophisticated and in some cases are limiting their liability by requiring the developer (such as an irrigation district) to pay the Federal site charge.

(a) In such cases, how does FERC determine the amount of the 10(e) Federal site charge?

(b) Would FERC take into consideration, in determining a site charge, that the site charge had to be paid by an irrigation district and could not be passed on to a power purchaser?

(a) The annual charge is calculated under the "sharing of the net benefits" method as described in question 15. The calculation does not take into consideration whether the charge was paid by an irrigation district or a power purchaser. The charge is the same in either case.

(b) The Commission staff periodically examines the annual charge methodology. This issue will be addressed in the next examination.

17. Have FERC and Interior yet resolved their differences as to the site charge?

18. If so, summarize generally the terms thereof.

19. If not, when can it be anticipated that agreement will be attained?

The differences have not yet been resolved and we do not have an anticipated agreement date. We can certainly use your support. The Chairman of the House Appropriations Subcommittee on Energy and Water Development and the Ranking Minority Member of that subcommittee have sent an encouraging letter to Secretary Watt, opposing a separate Interior fee and supporting FERC coordination of one fee. A copy of this letter is attached. A similar expression of support from the Senate side might well assist the process.

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Congress of the United States
House of Representatives
Committee on Appropriations
Washington, D.C. 20515

March 9, 1982

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The Honorable James G. Watt, Secretary
U.S. Department of the Interior
Washington, D.C. 20240

Dear Secretary Watt:

In your appearance before the House Appropriations Subcommittee on Energy and Water Feb. 25, you said that the Bureau of Reclamation has forwarded to you a decision document regarding the charging of falling water fees of non-federal developers of hydropower at federal dams. Your recommendation is to be forwarded soon to the Federal Energy Regulatory Commission, which assured us last Thursday that it wants to expedite a rule-making this spring to establish a common federal policy for all federal dams.

We are writing to express our strong hope that the Department of Interior not maintain in its recommendation that both the Bureau of Reclamation and the FERC should charge falling water fees. Having two fees would be cumbersome and of little ultimate benefit to the taxpayers, for whose benefit falling water fees would be charged.

Furthermore, even if the Bureau were to discount its fee to reflect the fee paid to the FERC, as Commissioner Broadbent assured the Subcommittee the Bureau would, it appears to us that the Bureau would still be reserving for itself the effective right to determine how large the total federal charge should be. The amount of the fee, of course, is the key policy question. In our view, there should be only one federal agency administering one policy over the hundreds of federal dams under the jurisdiction of several agencies.

With respect to the size of the fee, we would like to encourage the Department that in its recommendation to FERC it suggest a fee that will not be so high as to discourage non-federal developers. The Government should welcome non-federal capital, and it should welcome the speed with which non-federal developers can act,

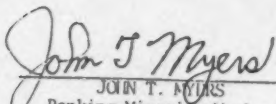
The Hon. James G. Watt
March 9, 1982
Page 2

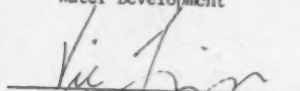
provided the government does not get in their way. We believe that the fee should be enough to cover whatever costs or inconvenience might befall the federal government as a result of the non-federal activity. If you do decide that the fee should also pick up a share of the burden for amortizing the dam itself, we think it only fair that other entities which may be carrying the dam's capital costs have their payments reduced in proportion to the hydropower's assumption of the obligation. Certainly if a non-federal developer is already paying off the dam's capital costs, its falling water charge should be reduced accordingly.

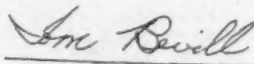
This is a matter of considerable importance in the development of our nation's domestic energy resources. There are 331 Bureau dams. As of March 4, the FERC had issued preliminary permits for hydro feasibility studies on 95 of them. Another 62 preliminary permits are pending before the FERC, involving probably 30 more dams. The consequence of a prolonged dispute between the FERC and the Department are obvious. The consequence of a fee that is too high to make non-federal development economically viable would only be to artificially discourage the formation of non-federal capital, and thereby mean more delays and more burden on the federal budget to get the job done.

The federal Power Act of 1920 and the Reclamation Act of 1939 may be interpreted so as to confer upon both the Bureau and the FERC authority to establish and levy falling water charges. However, nothing in law prevents the two agencies from coming to an agreement that is sensible, simple for the permit consumer, and conducive to non-federal development. We would hope that the Department would defer to the FERC in this matter. To do so would be consistent with the overall regulatory philosophy of the Administration and with the testimony of both yourself and Under Secretary Hodel before our Subcommittee. We hope you make your recommendations to the FERC in that spirit. Thank you.

Sincerely,


JOHN T. MYERS
Ranking Minority Member
Subcommittee on Energy and
Water Development


VIC FAZIO
Member of Congress


TOM BEVILL
Chairman
Subcommittee on Energy
and Water Development

20. A year ago, you told this Committee that your budget for FY 82 hydro activities could be adequate only if the licensing threshold were changed to 15 MW. How have you been coping since we have not acted? What does FY 1983 look like?

The following table shows the filings the Commission has received through February 1982, current projections through FY 1982, and anticipated FY 1982 and FY 1983 receipts in our FY 1983 Congressional Budget Request.

<u>Type Filing</u>	<u>Filing</u>	<u>Projection</u>	<u>Budgeted</u>	<u>Budgeted</u>
	<u>FY 82 to 2/28</u>	<u>FY 82</u>	<u>FY 82</u>	<u>FY 83</u>
Major Licenses	68	170	85	216
Minor Licenses	33	84	65	105
Amendments (New Capacity)	10	25	30	25
Preliminary Permits	480	1200	1500	1200
Exemptions	151	378	250	250

Filing rates through the first five months of the fiscal year are substantially higher than anticipated. This appears to be the result of competition for sites. This competition is forcing applicants to file for licenses earlier in order to be first-in-time over other competitors. Preliminary permit holders also are filing licenses before expiration of the permits.

The Commission currently may issue exemptions from licensing for projects with installed capacities of 5 MW or less. This limit is not a "licensing threshold", but more properly an exemption threshold. Commission staff time and decisions are required for both licenses and exemptions. However, issuance of a license is more workpower intensive than issuance of an exemption.

If the exemption threshold were 15 MW, the Commission would have considered as exemption candidates in FY 1982 51 major licenses, 84 minor licenses, 378 exemptions, and 840 preliminary permits. This would have caused a workpower reduction in over 1,300 cases. This in turn would have allowed staff to concentrate on licensing the larger projects.

21. Section 204(b) of Title II of the Federal Power Act provides that FERC may grant certain exemptions from licensing requirements, including exemption from any site charge, if the installed capacity of a proposed plant does not exceed 15 megawatts.

(a) Are you (FERC) aware of any application for exemption from the site charge where an exemption from the site charge has been denied, assuming, of course, that the Applicant meets all of the requirements of the exemption statute?

(b) If FERC does grant an exemption from the site charge, do you believe that Interior should impose a charge under 9(c) of the 1939 Reclamation Act for the use of the same facilities?

(c) Do you believe that Congress should increase the 15 megawatt exemption for facilities in those situations where a non-federal entity (such as an irrigation district) proposes to develop a small hydro facility without cost or expense to the United States?

Section 213 of the Public Utility Regulatory Policies Act of 1978 (PURPA) added Section 30 to the Federal Power Act, giving the Commission authority to exempt small conduit hydroelectric facilities (having an installed capacity no greater than 15 megawatts) from regulation under Part 1 of the Act. Commission Order No. 76 contains the procedures for this exemption process.

(a) I am not aware of any denial of an exemption from charges, assuming the applicant met all of the requirements of Order No. 76.

(b) The Commission has not as yet addressed the imposition of a charge by Interior under 9(c) of the 1939 Reclamation Act for the use of such conduit facilities.

(c) We concur with proposed legislation in H.R. 4485 to amend Section 30 of the Federal Power Act to completely exempt small hydro plants incidental to existing water distribution systems. Currently the Commission may, at its option, exempt qualifying projects (15 MW or less and utilizing a manmade conduit) from all or a portion of Part 1 of the Act, provided that Fish and Wildlife agencies are consulted and their requested terms and conditions are made a part of the exemption. The Commission's regulations were established to expeditiously process applications while still taking into consideration environmental concerns. The Commission also reserves the power to enforce the terms and conditions of the exemption. Conduit exemptions approved by the Commission to date have been generally fast and non-controversial, with minimal environmental or other problems.

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The proposed bill would mandate, allowing no option, that qualifying projects be totally exempt from the Act. Two issues rise from the bill as written: (1) It appears that such applicants would only have to prove that their projects would qualify. It is uncertain to whom they would prove this. No license or exemption would be approved by the Commission. Environmental, safety, and any other considerations would not be addressed by the FERC. Presumably the States would fill the jurisdictional void thus created. (2) It is unclear what impact such exemption would have on the imposition of annual charges by Bureau of Reclamation.

22. Please indicate the number of preliminary permit applications and the number of license applications you received in FY 1982 to date, broken down into the following categories: 0-5 MW, 5-15 MW, and over 50 MW. Please also include any projections you may have for FY 1983.

Review of the Commission's receipts in FY 1981 showed that 51% were less than 5 MW, 20% were between 5 and 15 MW, 23% were between 15 and 50 MW, and 6% were over 50 MW. This projection should be reasonably accurate for FY 1982 and FY 1983:

	<u>Actual Filings</u> <u>10-1-81 to 2-28-82</u>	<u>Projection</u> <u>10-1-81 to 9-30-82</u>	<u>Projection</u> <u>10-1-82 to 9-30-83</u>
a. Preliminary Permits Applications			
1. Total	480	1,200	1,200
2. 0 up to 5 MW	245	612	612
3. 5 - 15 MW	96	240	240
4. over 15 to 50 MW	110	275	275
5. over 50 MW	29	73	73
b. License Applications			
1. Total	101	254	321
2. 0 up to 5 MW	51	129	164
3. 5 - 15 MW	20	50	64
4. over 15 to 50 MW	24	60	74
5. over 50 MW	6	15	19

23. You have expressed justifiable concern for prompt responses on the part of other Federal agencies in the review process. On the other hand how prompt is FERC in responding to the requests of other agencies for assistance or in resolving appeals to FERC rulings?

Requests from other agencies for FERC assistance or comment with respect to hydroelectric matters are not frequent. Routine requests are received to review Coastal Zone Management Plans, environmental impact statements, and agency rulemakings. Where responses are to be offered by the FERC, every effort is made to do so in a timely manner. We are not aware of complaints from other agencies about FERC tardiness on such matters. The staff is always willing to meet with the staff of other agencies to discuss matters of mutual interest.

The vast majority of appeals or rehearings of FERC rulings are made by private parties and not by other Federal agencies. You can be assured that whenever an appeal or a rehearing is filed -- particularly by a sister Federal agency -- it is carefully considered by the Commission before any action is taken. If there is delay in resolving the appeal, it stems from this determination to reevaluate our decision whenever another agency finds something wrong enough with it to appeal. Furthermore, it has been longstanding Commission practice to encourage agency participation in FERC cases by soliciting their views and by employing a liberal policy towards granting intervention under nearly all circumstances.

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF THE HONORABLE CARLOS J. MOORHEAD
OF CALIFORNIA

SUBCOMMITTEE ON ENERGY REGULATION
AND
SUBCOMMITTEE ON WATER AND POWER

FEBRUARY 24, 1982

MR. CHAIRMEN, THANK YOU VERY MUCH FOR GIVING ME THE OPPORTUNITY TO TESTIFY TODAY. I COMMEND THE SENATORS FOR SCHEDULING THESE HEARINGS ON HYDROELECTRIC POWER. I THINK THE SCHEDULING OF THESE HEARINGS SHOWS THAT THERE IS SERIOUS CONCERN ABOUT ENVIRONMENTALLY ACCEPTABLE DISPLACEMENT OF OIL AND CONSUMERS OF ELECTRIC POWER.

THE ADMINISTRATION HAS SET FORTH A COMPREHENSIVE STATEMENT AND PLAN OF ACTION FOR NUCLEAR POWER WHICH THE CONGRESS IS REVIEWING AT THIS TIME. AT THE SAME TIME, I THINK THE TIME IS RIPE FOR NEW DIRECTION AND ENTHUSIASM FOR HYDROELECTRIC POWER. AFTER ALL, THE 1980 FIGURES SHOW THAT HYDROELECTRIC POWER SUPPLIES APPROXIMATELY 4.1 PERCENT OF OUR ENERGY NEEDS WHILE NUCLEAR POWER SUPPLIES 3.5 PERCENT. HYDRO CAN PROVIDE EVEN MORE OF THE TOTAL U.S. ENERGY REQUIREMENT. WE NEED A PLAN OF ACTION. WHETHER IT COMES FROM THE ADMINISTRATION OR THE CONGRESS, THE TIME IS RIPE FOR LEADERSHIP IN THE PRODUCTION OF HYDROELECTRIC POWER. I STAND READY TO WORK WITH MY COLLEAGUES IN BOTH BODIES TO TAKE UP THE CHALLENGE OF REGULATORY AND OTHER REFORMS NECESSARY TO STIMULATE THE PRODUCTION OF HYDROELECTRIC POWER INCLUDING THE DEVELOPMENT OF NEW HYDROELECTRIC FACILITIES AND THE IMPROVEMENT OF EXISTING FACILITIES.

SUBSTANTIAL INCREASES IN FOSSIL FUEL PRICES HAVE BROUGHT INTENSIFIED INTEREST IN DEVELOPING MORE FULLY CHEAPER AND CLEANER DOMESTIC SOURCES OF ENERGY. CERTAINLY HYDROPOWER IS A KEY DOMESTIC SOURCE OF ENERGY. IN 1979, THE CAPACITY OF 1,251 HYDROELECTRIC FACILITIES WAS APPROXIMATELY 64,000 MEGAWATTS OF ELECTRICAL ENERGY. THIS WAS APPROXIMATELY 13 PERCENT OF THE NATION'S TOTAL GENERATING CAPACITY. BY 1990, IT HAS BEEN CALCULATED THAT DEVELOPMENT OF HYDROELECTRIC POTENTIAL AT SITES WITH EXISTING GENERATING CAPACITIES COULD INCREASE VERY SIGNIFICANTLY. OBVIOUSLY, CLEAN HYDROELECTRIC POWER CAN REDUCE OUR DEPENDENCE UPON FOREIGN OIL

AS A RESULT OF USEFUL TALKS I HAVE HAD WITH COMMISSIONER SHELDON OF FERC, I BELIEVE THAT FERC IS VERY SERIOUS ABOUT FULLY DEVELOPING THIS COUNTRY'S HYDROELECTRIC POTENTIAL. AS A RECENT GAO REPORT TO THE CONGRESS INDICATED, FERC KNOWS THAT LICENSING REFORM AMONG OTHER REFORMS IS CRUCIAL IF WE ARE GOING TO ACHIEVE THE WORTHWHILE GOAL OF DISPLACING FOREIGN OIL WITH CLEAN HYDROPOWER.

IT IS IN THIS SPIRIT OF LICENSING REFORM THAT I HAVE INTRODUCED H.R. 4485, THE PURPOSE OF WHICH IS TO FURTHER ENCOURAGE THE PRODUCTION OF CONDUIT HYDROPOWER.

WE ARE JUST BEGINNING TO RECOGNIZE THE HYDROELECTRIC POTENTIAL AVAILABLE IN THE WATER CONDUITS OF OUR WATER UTILITIES. MANY OF OUR NATION'S WATER AGENCIES HAVE EXTENSIVE DISTRIBUTION SYSTEMS WHERE ENERGY IS CURRENTLY WASTED THROUGH PRESSURE REDUCING STRUCTURES OR OTHER DEVICES. SMALL HYDROELECTRIC GENERATORS IN WATER CONDUITS WERE

NOT FINANCIALLY FEASIBLE WHEN MANY OF THESE CONDUITS WERE INSTALLED, BECAUSE THE PRICE OF OIL AND OTHER FOSSIL FUELS WAS LOW. NOW, OF COURSE, THE MARKET HAS SHIFTED IN FAVOR OF THESE FACILITIES.

THE POTENTIAL OF THESE SMALL PLANTS PARTICULARLY INTERESTED ME AFTER SURVEYING THE EXTENSIVE WATER DISTRIBUTION SYSTEMS IN SOUTHERN CALIFORNIA AND GOING ON TO REVIEW THOSE IN MANY OTHER REGIONS OF THE COUNTRY. METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA INSTALLED ITS FIRST GENERATOR IN ONE OF ITS WATER SUPPLY CONDUITS IN 1980. FOR A CAPITAL COST OF \$400,000, THIS ONE-MEGAWATT PLANT WILL PRODUCE ENOUGH ENERGY TO SAVE 7,750 BARRELS OF OIL EACH YEAR. COMBINED WITH ADDITIONAL METROPOLITAN WATER DISTRICT FACILITIES, APPROXIMATELY 743,800 BARRELS OF OIL PER YEAR CAN BE DISPLACED. IF WE CAN MULTIPLY THESE PROJECTS IN EVERY WATER SYSTEM WHERE THERE IS ENERGY WASTED, WE WILL MAKE AN IMPORTANT CONTRIBUTION TO ENERGY INDEPENDENCE.

PRELIMINARY DATA SHOW THAT THE NATIONWIDE POTENTIAL FOR CONDUIT HYDROELECTRIC FACILITIES IS APPROXIMATELY 800 MEGAWATTS. IF WE WERE TO DEVELOP THIS POTENTIAL, 6 MILLION BARRELS OF FOREIGN OIL COULD BE DISPLACED ANNUALLY AND ABOUT 180 MILLION DOLLARS WOULD NOT ANNUALLY FLOW OUT OF THE COUNTRY TO OPEC.

THROUGH AN AMENDMENT TO PURPA, WE ADDED A NEW SECTION 30 TO THE FEDERAL POWER ACT (KNOWN AS THE MOORHEAD EXEMPTION) WHICH GAVE FERC DISCRETIONARY AUTHORITY TO EXEMPT 15 MEGAWATT OR LESS CONDUIT HYDROELECTRIC FACILITIES FROM LICENSING REQUIREMENTS.

THE TYPE OF FACILITIES WE ARE TALKING ABOUT HERE ARE THOSE WHICH WOULD BE INSTALLED IN MAN-MADE CONDUITS AS A PART OF AN OPERATING WATER SYSTEM, THE PRIMARY PURPOSE OF WHICH IS THE DISTRIBUTION OF WATER FOR MUNICIPAL, INDUSTRIAL OR AGRICULTURAL PURPOSES. IF THE FACILITY IS LOCATED ON FEDERAL LANDS, SUCH AS AT A DAM OR OTHER IMPOUNDMENT, THEN THE EXEMPTION WOULD NOT APPLY.

AFTER OBSERVING THE OPERATION OF THIS DISCRETIONARY EXEMPTION PROCEDURE FOR THREE YEARS, I HAVE NOT BEEN ABLE TO DETERMINE THAT A NON-MANDATORY EXEMPTION WITH A 15 MEGAWATT CEILING SATISFIES ANY FEDERAL OBJECTIVES OR MEETS ANY PUBLIC PURPOSE. ON THE CONTRARY, THESE RESTRICTIONS HINDER AN IMPORTANT NATIONAL OBJECTIVE FOR THE PRODUCTION OF ENERGY BY IMPOSING A NEW AND FREQUENTLY UNFAMILIAR REGULATORY PROCESS ON PUBLIC AND PRIVATE WATER UTILITIES WHICH ARE GENERALLY SUBJECT TO EXTENSIVE GOVERNMENT REGULATION.

CONSEQUENTLY, H.R. 4485, THE CONDUIT HYDROELECTRIC ACT, WOULD AMEND SECTION 30 OF THE FEDERAL POWER ACT TO AUTOMATICALLY EXEMPT FROM LICENSING REQUIREMENTS ALL CONDUIT HYDROELECTRIC FACILITIES NOT LOCATED ON FEDERAL LANDS THAT MEET THE EXISTING PRIMARY PURPOSE TEST.

THIS WOULD ACCOMPLISH A NUMBER OF OBJECTIVES:

(1) A WATER AGENCY PROPOSING TO BUILD A HYDROELECTRIC PLANT IN ONE OF ITS WATER CONDUITS WOULD NOT HAVE TO PREPARE THE SOMETIMES BURDENSOME, COSTLY, AND DETAILED APPLICATION CURRENTLY REQUIRED IF ITS PROJECT MEETS THE REQUIREMENTS OF THE EXEMPTION.

(2) NO SIZE LIMIT IS IMPOSED. THIS MEGAWATT SIZE RESTRICTION LIMITS FULL DEVELOPMENT OF THIS RESOURCE FOR NO APPARENT REASON.

(3) TIME DELAYS IN INSTALLING PROJECTS AND POTENTIALLY THREATENING TERMS AND CONDITIONS INVOLVING WATER OPERATIONS ARE REMOVED.

H.R. 4485 WILL FURNISH A REAL INCENTIVE FOR WATER AGENCIES TO USE THEIR WATER CONDUITS TO PRODUCE ENERGY.

CONSEQUENTLY, I WOULD HOPE THAT WE WOULD NOT OVERLOOK THE REFORMS CONTAINED IN H.R. 4485 AS WE MOVE TOWARD MUCH NEEDED HYDRO LICENSING REFORM.

THANK YOU.

I WOULD ASK THAT THE FULL TEXT OF H.R. 4485 BE INCLUDED AFTER MY STATEMENT.

97TH CONGRESS
1ST SESSION

H. R. 4485

To reform the Federal Power Act to encourage conduit hydroelectric facilities.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 1981

Mr. MOORHEAD introduced the following bill; which was referred to the
Committee on Energy and Commerce

A BILL

To reform the Federal Power Act to encourage conduit
hydroelectric facilities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Conduit Hydroelectric
5 Act of 1981".

6 SEC. 2. FINDINGS AND STATEMENT OF PURPOSES.

7 (a) FINDINGS.—The Congress finds that conduit hydro-
8 electric power is a clean, economical energy source with the
9 clear potential of conserving significant amounts of energy.

1 (b) STATEMENT OF PURPOSES.—The purposes of this
2 Act are—

- 3 (1) to conserve energy;
4 (2) to enhance environmental quality; and
5 (3) to benefit consumers of electrical power and
6 water by restraining the costs of providing such serv-
7 ices.

8 SEC. 3. CONDUIT HYDROELECTRIC FACILITIES.

9 Section 30 of the Federal Power Act (16 U.S.C. 823a)
10 is amended to read as follows:

11 "SEC. 30. Any facility (excluding any dam or other im-
12 poundment and any facility located on Federal lands) con-
13 structed, operated, or maintained for the generation of elec-
14 tric power which utilizes for such generation only the hydro-
15 electric potential of a manmade conduit operated for the dis-
16 tribution of water for agricultural, municipal, or industrial
17 consumption and not primarily for the generation of the elec-
18 tricity shall be exempt from the requirements of this part,
19 including any license requirements of this part."

○



DALE M. VOLKER
35TH DISTRICT
CHAIRMAN
COMMITTEE ON ENERGY

THE SENATE
STATE OF NEW YORK
ALBANY 12247

PLEASE RESPOND
☒ ALBANY OFFICE:
ROOM 802
LEGISLATIVE OFFICE BUILDING
ALBANY, NEW YORK 12247
518-485-2081
☐ DISTRICT OFFICE:
4881 BROADWAY
DEPEW, NEW YORK 14043
716-681-3373

October 22, 1981

Senator Frank H. Murkowski, Chairman
Water and Power Subcommittee
3104 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Murkowski:

As Chairman of the Senate Energy Committee here in New York I wish to add my comments to the Hearing Record of Monday, October 19, in the matter of the future Hydro Electric Development and Licensing Procedure, particularly in the area of continued federal tax credits. Parenthetically, it is also important to note that these remarks, in contrast to an earlier statement by the Power Authority of the State of New York, reflect the opinions of elected officials charged with the overall responsibility of State energy policy.

For the record, I think it is important to emphasize that New York absolutely needs the continuation of federal Business Investment and Energy Tax Credits as they apply to small hydro development. Without this twenty-one percent inducement progress would surely slow and many of our marginal sites could not be seriously considered. With more than half of the State's potential sites being located within mountainous Adirondack Park lands, off limits to development, every accessible site is valuable.

Secondly, we have taken our own hydro development initiative through legislation which I sponsored; it has already caused significant activity in the State. The bill (Chapter 843, 1981) not only serves to waive environmental and other permit regulations in the interest of rapid development, but takes a giant step, ahead of any other state in the nation, by setting a purchase contract floor price. In short, any electricity generated at a new site commands a minimum price of six cents per kilowatt hour from the local utility, which must purchase the power, by law.

Through this rather bold step we have seen millions of private investment dollars being geared up for development in the Empire State. We would certainly hate to see the bloom lost to federal changes in this intricate, expensive capital financing arena.

Senator Frank H. Murkowski

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Thirdly, I would like to quote verbatim from the State's own Energy Master Plan, II update. Highlighted in the summary for legislative review is a priority suggestion that we: "Amend the State Tax Law to provide an additional business tax credit for renewable resource investments."

(It is interesting to note that this policy document is theoretically binding on the Power Authority of the State, which offered testimony in opposition to continued tax incentives before your body earlier this week.)

Fourth, contained in the Office of Management and Budget publication, Additional Details on Budget Savings (April 1981), there is a cautionary note explaining that "no further Department of Energy spending is needed" in the small hydro area as goals are already being met through private investment. Later in the same section, OMB clearly states that, in its opinion, "sufficient incentives through investment tax credits are available."

Thus, as we can see, the Reagan Administration has planned administrative budget reductions based on existing private sector investment. It would seem to me that any change in the tax code might well be met with a challenge from the President.

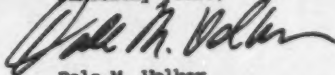
Finally, I offer various historical references from our own Governor Hugh Carey, PASNY Chairman John Dyson, cabinet members, as well as legislative leaders of both parties concerned with energy policy. All have repeatedly emphasized that New York's number one priority for continuing economic growth depends on the expedient diminution of our reliance on imported oil for the generation of electricity. I point out, in fact, that New York's utilities are the largest importers of oil for the generation of electricity in the nation; they import more oil than many of the world's larger industrial nations.

In summary, I would urge your committees to recommend that these tax credits be maintained, and if possible, be amended to relieve some of the regulatory lag which is embodied in licensing procedures. It is my understanding that the main deadline for tax credit qualification is set for 1985. Yet, the Federal Energy Regulatory Commission, which grants licenses under its own deadlines, may well force a developer outside of the tax deadline because of its own bureaucratic licensing delays.

We in New York cannot afford to lose one site, whether by regulatory lag or reduced federal tax incentives. Instead we must work in concert to spur energy independence.

I appreciate your admitting this letter to the record and hope that it provides a brief, but well-rounded view of the position of the State of New York. I would be happy to respond in detail to any questions raised by this submission.

Sincerely yours,



Dale M. Volker

DMV:Htg



October 27, 1981

The Honorable Frank H. Murkowski, Chairman
Senate Subcommittee on Water and Power
Senate Committee on Energy and Natural Resources

The Honorable Gordon J. Humphrey, Chairman
Subcommittee on Energy Regulation,
Senate Committee on Energy and Natural Resources
3106 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Hearings on Hydroelectric Power Development

Dear Chairmen Murkowski and Humphrey:

This statement is made primarily on behalf of several California political subdivisions each of which is currently seeking an FERC license for a major unconstructed hydroelectric project. These entities are the Calaveras County Water District, license applicant for FERC Project No. 2409, the Kings River Conservation District, license applicant for FERC Project No. 2890 and El Dorado County Water Agency and El Dorado Irrigation District, joint license applicants for FERC Project No. 2761.

We wish to make clear that we appreciate the great workload of hydroelectric permit, license, and exemption applications which the FERC Staff is currently straining under. The increased awareness of the value of renewable resources, provisions of the Windfall Profit Tax Act giving great financial incentives to private developers, streamlining of FERC permitting and licensing procedures, and the high cost of alternative fuels, has resulted in a flood of permit and license applications at FERC. It seems clear that the Commission needs more money, more staff, and perhaps a different internal structure to process this workload and we would certainly urge and support all such remedial efforts. However, we also believe that more effort and reorganization is required by FERC to increase the efficiency of its processes for licensing major unconstructed projects. This suggestion is made because of the processing

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delay suffered by these and other applicants seeking licenses for major unconstructed projects. We are talking particularly about the delay incurred from the time when the licensing proceeding is "fully submitted" and all the written evidence is in, until the time a decision is made on whether even further proceedings in the form of a costly formal evidentiary hearing are required or whether the Commission can move promptly to license the project. The California license applicants in these proceedings have urged that project opponents have not met their burden of showing the need for an evidentiary hearing. It is their view that a project opponent must do more than merely make conclusory statements about project need or impacts and must in fact proffer evidence to support its allegations of the existence of material issues of adjudicative fact. This is a very important issue because conducting an evidentiary hearing is a very expensive process, can delay licensing of a project at least two years, and should not be undertaken unless the need for such a hearing is clearly demonstrated. The applicants have waited for what seems to be an unreasonably lengthy period for a decision on this important issue.

It should be understood that major unconstructed hydro projects undergo a strenuous public review process prior to licensing by FERC. The original application is subjected to Federal, state, and local public agency comment. Any interested party is given the opportunity to comment, protest, or to file a petition to intervene in the proceeding. This process often results in revisions to the application as has been the case for the projects proposed by these California entities. The FERC Staff also prepares a draft environmental impact statement (DEIS) utilizing its own research, information from the license applicant's Exhibit W-environmental report, and comments made by others on that report. This DEIS process is commenced with a "scoping" session which is really a public hearing, held by the FERC staff

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in the project area, at which all those wishing to raise subjects for consideration in the EIS are heard. Public comments are also sought on the DEIS and the opportunity to petition to intervene is granted on the basis of the DEIS just as it is on the filing of the original license application which is noticed in the Federal Register and local newspapers. Finally, the final environmental impact statement (FEIS) is prepared and that also is made available for public scrutiny and comment. In addition, as the Commission did in all three of the proceedings referenced, local public meetings are held to allow interested members of the public to state their views on the project. At this point FERC will have compiled a very extensive record from which it can be determined whether a further formal hearing is necessary and, if not, whether the record justifies issuance of a license for the project. It should be recognized that there may also have occurred parallel proceedings at the State level on the State environmental impact report and many identical issues may have been raised in state water rights proceedings. Indeed in one of the matters referenced there has been litigation in the State Court under the California Environmental Quality Act, which was resolved in favor of the project. There have even been hearings held by the Corps of Engineers concerning its authority to grant §404 (dredge and fill) permits under the Clean Water Act.

These license applicants are greatly concerned about the delay which has occurred between completion of the FEIS, holding of the local public meetings, and a decision on the need for an evidentiary hearing. In one of the license proceedings referred to here, the original application was filed by the Calaveras County Water District for Project No. 2409 in 1963 in competition with a competing license applicant. After a full evidentiary hearing on the competing license

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applications the Presiding Examiner, (now called Administrative Law Judge) determined that a license should not be issued to the successful competing applicant (Calaveras) on the basis that a market for the power had not been demonstrated because there was at that time no signed power purchase contract. The application remained inactive for a number of years until 1975 when a new application was filed by the District. Finally by November 1979 a DEIS was issued which was revised and an FEIS issued in June of 1980. It was not until six months later, December of 1980, that the Commission held local public meetings on the project. Nearly eleven months later, the Staff has still not made a decision on the question of whether or not an evidentiary hearing is required in this proceeding. Project No. 2409 will have an installed capacity of 200,000 kw, produce 560,000,000 kwh of electrical generation annually and provide 189,000 acre-feet of water storage capacity. Furthermore, generation from the project will eliminate the need to burn 1,000,000 barrels of oil annually, but these benefits still face an uncertain future.

Another of the license applicants, the Kings River Conservation District, filed its application for license for Project No. 2890 in November of 1978 following a study of this and other potential projects under a preliminary permit granted in 1976. Project No. 2890 will have an installed capacity of 120,000 kw, generate 360,000,000 kwh annually, provide 90,000 acre-feet of water storage and eliminate the burning of 600,000 barrels of oil annually. The draft environmental impact statement was issued for the project in November of 1979 and the FEIS was issued in August of 1980. Local public meetings were held on the project in October of 1980. One year later there is still no Staff recommendation or Commission decision on the need to hold an evidentiary hearing or a decision to issue a license for this project.

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The last project discussed involves an application which was filed jointly in November 1979 by the El Dorado County Water Agency and the El Dorado Irrigation District for Project No. 2761. This project offers 110,400 kw of installed capacity, 470,000,000 kwh of generation and 175,000 acre-feet of water storage. The project generation can eliminate the need to burn 730,000 barrels of oil annually. The draft environmental impact statement for this project was issued in October of 1980 and the final environmental impact statement was issued in May of 1981. The local public hearings were not held until five months later, during October of 1981. While it is thus too soon to expect a decision in this matter, the jury is still out on how long it will take the Staff but it is earnestly hoped it will not take the extended period which has already passed on the other two projects with no action by FERC.

The license applicants are concerned about this delay because these projects offer very important and needed multiple benefits which become more expensive every month that they are delayed in licensing. The projects discussed above would together supply installed capacity of 430,000 kilowatts, 1,390,000,000 kwh of electrical energy, 454,000 acre-feet of water storage capacity and would displace the burning of 4,330,000 barrels of oil annually. Because of inflation and high interest rates the costs of delay to these projects is approximately \$9 million per month and \$100 million per year. Those are costs which will ultimately have to be paid by the purchasers of the power from these projects.

It should not take so long to reach a determination in a case once it has been fully submitted for decision. If there were a concentrated effort on reaching a determination in cases which have reached this point in their processing a decision could be reached reasonably quickly. It appears that the Staff must work

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on these cases as just another part of normal workload along with many other matters of arguably less urgency. Perhaps there should be some mechanism providing for Staff members who have been assigned to work on these projects to take a "task force" approach to projects reaching this stage of processing in order to permit a prompt Commission decision. The license applicants in these proceedings have urged prompt decision making because of the very serious costs of delay, however no change in the method of reaching decisions appears to have resulted. Some new mechanism, or "fast track," at this stage of a proceeding at least is clearly needed.

Apart from the decision-making problem referred to above, there are several areas at FERC which experience suggests require prompt remedial attention. One area concerns the sad state of FERC's official reports and indexes. Section 552(a)(2) of the Administrative Procedure Act, provides in relevant part that:

Each agency, in accordance with published rules, shall make available for public inspection and copying --

- (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases . . .

unless the materials are promptly published and copies offered for sale... . Each agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against the party other than an agency only if: (i) it has been indexed and either made available or published as provided by this paragraph; or (ii) the party has actual and timely notice of the terms thereof. (Emphasis added.)

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Although the Commission issues its official orders on a daily basis there is no current official reporter and collector of these decisions and no useful index to these decisions. The last official FERC (FPC) report is 56 FPC which covers Commission Orders issued through 1976. The last published index covers materials only through 1966. The lack of an official reporter makes practice before the Commission much more difficult than it should be because of the difficulty of locating precedential holdings. This is not a new problem but it has persisted for far too long, to a point of inefficiency. The Commission should be directed to allocate sufficient funds to bring its official reporter system up to date and the Congress should appropriate additional funds as necessary in this regard.

Another matter which should be brought to the attention of the Subcommittees and monitored as necessary, are recent actions of the Commission in permitting and licensing proceedings tending to be "arbitrary and capricious" in nature. This is a result of the Commission's adoption of the Staff's approach to a very heavy workload. The Staff is attempting to apply its rules and regulations in connection with preliminary permits in particular in a mechanistic way, almost by rote, in order to eliminate as many filings as possible and to clear its backlog. In many cases the rules the Staff is attempting to implement are not clear in the first instance and the Staff's interpretation of the rules actually reaches a result at cross purposes with their underlying intent and with provisions of the Federal Power Act. Appealing these decisions through several levels of Commission review and even to the courts can be an onerous and cost prohibitive process, especially in the case of smaller projects having sensitive economic feasibilities.

Finally, some general comments are made with regard to the preference granted to States and municipalities by Section 7 of the Federal Power Act. The "municipal" preference was clearly intended by the drafters of the Federal Water

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Power Act which was enacted in 1920. See FERC Opinion No. 88 (June 27, 1980). The drafters of the Act viewed the Nation's hydroelectric resources and waters as belonging to the people of the Nation and determined that it was in the public interest that these resources should be held in public hands. Therefore they granted the preference found in Section 7(a) of the Federal Power Act which provides:

In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under Section 15 hereof the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region...

This preference is especially important today when private capital and developers, encouraged by the substantial tax incentives granted them by the Windfall Profits Tax Act, are filing thousands of permit and license applications across the country. Public entities which do not have the benefit of these immediate financial incentives at least have in Section 7(a) a defensive tool which can save many of these sites for ultimate public ownership and operation. The municipal preference granted by Section 7 of the Federal Power Act should not be weakened under the guise of regulatory "streamlining" or "administrative efficiency" and any attempts to do so should be rejected. FERC has implemented its case by case exemption of projects of five megawatts or less to eliminate the municipal preference and it should not be allowed to extend this approach to exemptions of projects of up to 15 mw as is currently being contemplated.

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As noted at the outset, we are not unappreciative of the efforts that FERC is making in trying to deal with a difficult situation. It is however believed the above areas need remedial treatment and deserve the Subcommittees' attention.

We thank you for the opportunity to make these remarks a part of the record of these hearings.

Respectfully submitted,

McCARTY, NOONE & WILLIAMS

Christopher D. Williams

Special Counsel to Calaveras
County Water District, Kings
River Conservation District,
El Dorado County Water Agency
and El Dorado Irrigation District



American Paper Institute, Inc.

260 Madison Avenue, New York, N.Y. 10016(212) 340-0800

telex address: AMPAPINST New York

PULP, MATERIALS & TECHNOLOGY GROUP
Energy & Materials Department

Senate Committee on Energy
and Natural Resources, and
Senate Subcommittees on
Energy Regulation and
Water and Power
Dirksen Senate Office Building
Room 3202
Washington DC 20510

Gentlemen:

The attached written comments supplement the American Paper Institute's oral testimony presented at the Senate Subcommittees' Oversight Hearings on Hydro Licensing on October 19, 1981.

Thank you for this opportunity to share our views.

Sincerely,

Ronald J. Stinn
Vice President

RJS/im

Enclosure

**American Paper Institute, Inc.**

1619 Massachusetts Avenue, N.W., Washington, DC 20036
(202) 332-1050

November 20, 1981

Mr. Russell Brown
Senate Committee on Energy and Natural Resources
U.S. Senate
Washington, DC 20510

Dear Russ:

Enclosed are additional comments from the American Paper Institute for inclusion in the hearing record, pursuant to John Ferguson's request on October 19, 1981.

These include the following:

- 1) a covering memorandum from Ronald J. Slinn, Vice President of API;
- 2) a new introductory first paragraph to substitute for the first paragraph of John Ferguson's testimony as delivered;
- 3) a statement representing additional views of API;
- 4) an insert which includes material we feel is relevant to the topic under discussion.

We appreciate your cooperation in this effort and look forward to working with you on this issue in the future.

Sincerely,

Marc D. Yacker
Director
Legislative Affairs

NDY:lm
Enclosures

Chairmen Humphrey and Murkowski, members of the Subcommittees, I am John T. Ferguson, II, Legislative Counsel for Georgia-Pacific Corporation. I am appearing today on behalf of the American Paper Institute.

The American Paper Institute, Inc. (API), is the national trade association of the pulp, paper and paperboard industry in the United States. API consists of approximately 175 manufacturers producing 90% of the nation's pulp, paper, and paperboard output. API's member companies are major producers of hydroelectric power for industrial use, having last year generated over 2,400 million kilowatt hours of electricity. The pulp, paper, and paperboard companies are not only the owners of a substantial number of undeveloped hydroelectric sites, they are also the third largest industrial group consumer of electricity. The paper industry is also one of the largest landowners in the country, owning over 68 million acres of commercial timberland. Much of this land encompasses valuable water resources. Thus, API's member companies have the potential, the incentive and the operational experience to expand significantly the nation's hydroelectric resources.

STATEMENT OF THE AMERICAN PAPER INSTITUTE, INC.

These comments supplement the testimony of the American Paper Institute presented on October 19, 1981, by John T. Ferguson, II, of Georgia-Pacific Corporation at the Senate oversight hearing on hydro licensing.

A site owner preference, similar in operation to the municipal preference, would protect property rights without hindering hydropower development.

The most distressing problem to surface in the wake of the enactment of the Public Utility Regulatory Policies Act of 1978 ("PURPA") is the lack of consideration accorded site owners in the existing regulatory scheme. As matters now stand, a site owner is faced with the loss of his property to an outside developer even if the landowner stands ready to develop the site himself.

In earlier years when most hydropower development was in the form of enormous public works projects, the eminent domain power vested in licensees by § 21 of the Federal Power Act ("FPA") was rarely if ever exercised by anyone other than a governmental entity or a utility.* Few private

* FPA § 21, 16 U.S.C. § 814, provides that a licensee may condemn any property interests necessary for the construction of his project if the owners of those rights will not relinquish them voluntarily.

landowners were willing to construct hydropower facilities, especially when they could not market the power, and Congress had expressed a clear intent that development of the nation's hydropower resources take precedence over site owners' property interests. Under these circumstances, landowners only rarely lost property to hydro projects. Those that did could offer little argument in the face of the FPA's directives. Section 210 of PURPA has radically altered the status quo. The removal of institutional barriers regarding a market and establishment of realistic power purchase rates has sparked a dramatic increase in the number of preliminary permit applications being filed with the Federal Energy Regulatory Commission ("FERC"). In all of 1977, the year before the passage of PURPA, only 18 permit applications were filed. Early this year, FERC estimated that over 1800 applications would be filed in 1981, and indeed by the end of August more than 1300 had already been filed. The vast majority of these applications are being filed by private developers, frequently on sites they do not own. Many of these applicants are reputable, with both the experience and resources necessary to develop their projects. Many others, however, are so-called "storefront" developers, who have tied up scores of sites owned by other persons even though they have little access to the capital and expertise necessary to purchase and develop

those sites. The delays in project development and associated administrative burdens placed on FERC are unnecessary and should be eliminated.

All of these non-site owner developers are relying heavily on the FPA § 21 eminent domain power to secure the property rights necessary for their projects. Thus, site owners are faced with the involuntary loss of potentially extensive land holdings to these developers.

To be sure, the mere award of a preliminary permit does not mean that the site is lost. Many permits will be allowed to lapse because the permittee discovers that development is infeasible for him or because he doesn't have the resources to undertake the project. But a project which is not economic for an entrepreneurial developer may well be feasible for the site owner. The site owner does not have property acquisition expenses. Moreover, an entrepreneur with limited capital who has filed on a large number of sites may have to forego development of marginal but still economic sites in favor of the ones which promise the greatest return. Where an entrepreneurial developer allows his permit on an economic site to lapse, development will have been unnecessarily delayed for 18 months to three years. Even when the developer is reputable and seriously interested in building a project, prosecuting a condemnation proceeding against a

site owner who also stands ready to develop the project can delay a project for years.

As noted above, API recognizes the importance of low head hydropower in freeing the United States from dependence on foreign energy supplies, and we enthusiastically support the maximum feasible exploitation of the nation's hydropower resources. But we believe that under the existing regulatory scheme, this laudable policy is being implemented at the cost of traditional American respect for private property rights.

These two interests need not be inconsistent. The adoption of a site owner preference, similar in operation to the existing municipal preference, would protect property rights without compromising the nation's commitment to the development of our valuable hydropower resources. A site owner who stands ready to develop his site would have the right to do so. He could not block development, however, simply because he would prefer to use the land for other purposes.

A hydro site should be
valued in condemnation proceedings
at the greater of its value as a
hydropower site and its value
as determined by applicable state law.

The insult to site owners of loss of land through condemnation is aggravated by the fact that compensation,

based on the "highest and best use" of the land, may not include the land's value as a hydropower site unless the land has been used as such in the past. Thus, not only may a site owner be precluded by the licensing process from developing his own site, but he usually will not receive as compensation what the site would be worth to him if he were to develop it.

The traditional rationale in eminent domain law for denying compensation based on a special, non-preexisting use, such as hydro project value, is that such uses are too speculative to serve as the basis for valuation. The award of a FERC license, however, constitutes a recognition by that agency that hydro development of the site is feasible. The license is, in fact, a directive by FERC to the licensee to commence construction within two years. Under these circumstances, hydro development can hardly be said to be a speculative use.

API urges that, irrespective of the action taken with respect to a site owner preference, Congress amend § 21 of the FPA, 16 U.S.C. § 814, to provide that the condemnee shall be entitled, as compensation for his property, to the greater of its value as a hydropower site and its value as determined by applicable state law. Such compensation merely

recompenses the site owner for what his property is actually worth. and, thus, does not constitute a windfall to him.

"One-stop shopping" for hydro licenses should be centralized at FERC.

Related to the problem of conditions imposed on exemptions by outside agencies is the growing decentralization of hydro licensing authority at the federal level. The pulp and paper industry supports the concept of centralization of all such authority in FERC -- what has been called "one-stop shopping" for licenses. Over the years, jurisdiction over hydro site development has grown increasingly fragmented. Each new piece of environmental or water resources legislation has vested a degree of responsibility in another federal agency or created yet one more permit to be obtained by the hydro license applicant. The licensing process for major projects is now frequently so complex, costly and time consuming that it has attained an unjustifiable importance in the calculus of the overall investment decision.

The paper industry recognizes that the multiple levels of regulatory input and oversight do serve an important purpose in ensuring that environmental, wildlife and other social values are not overlooked or ignored in the rush to develop our hydroelectric resources. Nevertheless, a reasonable compromise between the defense of those values

and the pursuit of administrative convenience is possible. The paper industry believes that the draft legislation proposed by FERC Commissioner Sheldon, which affords all concerned agencies a limited time to comment on applications but centralizes all final authority in FERC, is such a compromise and endorses it wholeheartedly.

In response to utility testimony attacking Section 210 of PURPA, API reaffirms its belief that PURPA is indispensable in promoting the development of small, dispersed privately-owned generation capacity, which is a vital part of the nation's overall power generation network.

Several utility company witnesses at the October 19, 1981 hearing before this Subcommittee attacked § 210 of PURPA, 16 U.S.C. § 824a-3, as providing unnecessary financial incentives to private hydropower developers. API was both surprised and disturbed at the tenor of these comments. We had thought that the importance of private investment in the development of hydropower and the invaluableity of PURPA § 210 in stimulating such investment was well settled at this late date. Unfortunately, the utility industry still appears not to accept these ideas. While API does not believe this proceeding to be the appropriate forum for a debate on the merits of PURPA § 210, we feel compelled to

reaffirm our belief that that statute is indispensable to the future development of hydropower. API is responding to comments by utility company witnesses by communicating with congressional committee staff and congressmen who are reviewing the merits of PURPA in other forums.

Conclusion

In conclusion, the American Paper Institute has recommended the following changes in the hydro licensing process. These changes will result in the protection of property rights without compromising the nation's commitment to the development of valuable hydropower resources.

1. Existing law affecting exemptions from hydro licensing should be changed to: (a) increase from 5 MW to 15 MW the ceiling for exempt projects; (b) exempt projects involving new dam construction and repair of existing, breached dams; and (c) allow fish and wildlife agencies to suggest, but not dictate, exemption terms and conditions.

2. A site owner preference, similar in operation to the municipal preference, should be enacted to protect the property rights of site owners without hindering hydropower development.

3. Relicensing procedures should be changed to increase the maximum term of a license from 50 to 75 years, and existing licensees should be granted a preference in the relicensing process.

4. A hydro site should be valued in condemnation proceedings at the greater of its value as a hydropower site and its value as determined by applicable state law.

5. "One-stop shopping" for hydro licenses should be centralized within FERC.

6. Section 210 of PURPA should be retained to promote continued development of hydroelectric power.

API believes that low head hydropower can play a vital role in meeting America's energy needs in the coming decades. However, antiquated and even inequitable regulation threatens the most effective use of this valuable resource. API is confident that Congress and industry can work together to solve the existing problems and would like to thank this Subcommittee for the opportunity to submit these comments to supplement the record. If it would be of use, API would be happy to further supplement its comments with specific language designed to implement our proposals.

STATEMENT ON HYDRO LICENSING
ON BEHALF OF THE AMERICAN PAPER INSTITUTE

INSERT A

API's member companies are major generators of electricity, including thermal and hydroelectric power; for industrial use, having last year generated over 2.8 billion kilowatt hours of electricity. The pulp, paper and paperboard companies are not only the owners of a substantial number of potential hydroelectric sites, they are also the third largest industrial consumer of electricity.* The forest industry is also one of the largest landowners in the country, owning over 68 million acres of commercial timberland.** Much of this land encompasses valuable hydrological resources. Thus, API's member companies have the potential, the incentive and the operational experience to expand significantly the nation's hydroelectric resources.

API enthusiastically endorses the national policy, as embodied in the Federal Power Act ("FPA"), of developing those resources to the greatest practical degree. The effectiveness and equitable administration of that policy is threatened, however, by the very success of Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA") in reawakening broad investor interest in small hydro development. The resulting flood of preliminary permit applications has strained the 60-year old regulatory machinery of the FPA to the breaking point, and has revealed inequities in the treatment of site owners in the licensing process which are not easily remedied under the existing statute. API respectfully submits this statement to urge that PURPA Section 210 be retained, and that the regulatory process under the FPA be reformed so that hydropower might maximize its contribution to the nation's fight for energy independence.

- * Preliminary Report of the Annual Survey of Manufacturers on Fuel and Electric Energy Consumed (December, 1980)
- ** Review Draft of "An Analysis of the Timber Situation in the U.S.", U.S. Department of Agriculture, Forest Service

STATEMENT OF THE
TASK FORCE ON
SMALL HYDROELECTRIC DEVELOPMENT*
By
Ronald B. Robie, Chairperson

Chairman Levine and members, thank you for the invitation to meet with you today to discuss the use of small hydroelectric resources to help meet California's need for energy.

As you know, Governor Edmund G. Brown Jr. was an early supporter of alternative forms of energy. His vision is for an energy program in the State which will reduce our dependence on declining, non-renewable resources and will increase our use of renewable energy sources. These sources, properly managed, are more environmentally sound than the continued depletion of fossil fuels. Over the long term, they are likely to be the most rational energy sources available to our society.

This goal is further embodied in the Investing for Prosperity program of the Resources Agency, a 20-year plan to enhance and restore California's renewable resources.

The Governor has appointed task forces on wind power, cogeneration, and small hydroelectric projects. In July, 1980, Governor Brown pointed out that "Technologies like small hydro are here today, they are practical, they are simple and their growing use will go a long way toward freeing the United States from the economic and political tyranny of oil imports. In addition, small hydro projects are among the most environmentally benign sources of energy we have today."

*Presented to the Assembly Subcommittee on Energy on Hydropower, in Santa Monica, California on October 27, 1981.

The Task Force on Small Hydroelectric Development was established in January, 1980, with the goal of achieving maximum use of existing dams, aqueducts, and pipelines as sources of electrical energy. Nine department heads were named to the task force: I am the chairperson and director of the Department of Water Resources. Members are: Peter Dangermond, Jr., Department of Parks and Recreation; E. C. Fullerton, Department of Fish and Game; Deni Green, Office of Planning and Research; David E. Janssen, Department of General Services; Carla Bard, State Water Resources Control Board; John L. Geesman, California Energy Commission; Joseph E. Bodovitz, California Public Utilities Commission; and William F. Northrop, State Lands Commission.

At its first meeting, the task force set a goal of 250 megawatts of new capacity as a realistic estimate of the small hydro potential that could be developed within five years. By September, 1981, Federal Energy Regulatory Commission (FERC) permits or license applications had been filed for development of some 375 megawatts of new capacity at existing facilities.

This flood of applications has more than fulfilled our expectations, but it has also created problems, as I will explain in a few moments.

Task Force Accomplishments

One of the first assignments completed by the task force was a list of hydraulic structures -- dams, canals, and pipelines -- that have potential for generating hydroelectric power. The list totaled approximately 300 sites with a capacity of 550 megawatts and an annual generation of 2.5 billion kilowatthours. The size of the sites, by capacity and energy output, is shown in the following tables:

<u>Annual Energy Million kWh</u>	<u>Number of Sites</u>	<u>Installed Capacity Kilowatts</u>	<u>Number of Sites</u>
Under 1	90	Under 100	55
1 to 5	121	101 to 500	97
6 to 10	36	501 to 1,000	55
11 to 20	21	1,001 to 5,000	69
21 to 60	24	5,001 to 10,000	14
61 to 115	8	10,001 to 30,000	10
	<u>300</u>		<u>300</u>

If all these sites are developed, the energy produced would supply the residential needs of a million people and eliminate the need to burn 4 million barrels of oil in a thermal power plant. Assuming that oil costs \$30 a barrel, this equals \$120 million a year.

In July, 1980, Governor Brown held a meeting to announce the completion of the task force's first assignment, and to release the lists of structures that could be fitted with small hydro plants. The meeting was attended by utility representatives, engineers, equipment manufacturers, and representatives of local, state and federal agencies. The Governor challenged them to quickly develop the 550 megawatts of power identified in the list. (List is attached). Plainly, from the flood of small hydro applications, they have risen to the challenge.

A major effort of the Small Hydro Task Force has been to streamline and coordinate state review of proposed projects. The State Water Resources Control Board has initiated regulation changes to allow adding incidental power as a "purpose of use" to existing permits and licenses. The Board now processes on a priority basis applications for small hydro plants at existing structures.

The Resources Agency proposes amendments to its State Environmental Impact Report Guidelines that would categorically exempt small hydro projects at existing dams, canals and pipelines where:

1. The capacity of the facility is less than 10 megawatts. 2. Operation of the power plant will not change the water flow regime.
3. New power lines to connect the facility to existing power lines will not exceed a mile in length.

In addition, the task force has commented on FERC's proposed rulemaking to exempt ~~small hydro~~ projects from the Federal Power Act.

The task force also reviewed the Army Corps of Engineers' National Hydropower Study, which Congress authorized in 1976. The study was to develop a list of existing and potential sites; to estimate the amount of regional demand for future development; to examine and assess the social, economic, environmental and institutional factors that influence hydropower development; to suggest appropriate policies, strategies, and procedures to encourage further development; and to assess the impacts of expanded hydropower development. The results of the Corps study will be submitted to Congress this fall. Our task force will continue to monitor closely the legislative recommendations of the study to assure that California's interests are protected.

The task force has also published informational bulletins, reports and pamphlets on small hydro. These publications are described in the document, "Accomplishments of the Governor's Task Force on Small Hydroelectric Development." (Attached).

The task force reviews and comments on the publications prepared by its members to insure that the information is consistent with State policy.

In April 1981, the Department of Water Resources (DWR) published Bulletin 211 in response to SB 1834 (Alquist), which directed the Department to evaluate the cost-effectiveness of equipping existing structures with power-generating facilities. This report contains 28 preliminary feasibility studies, and the information on these projects can be used to judge economic suitability and in filings for FERC preliminary permits. I have copies for the Committee.

The California Energy Commission has prepared a report on the types and ranges of environmental impacts that might be encountered on hydro projects. This information will help developers to evaluate the environmental feasibility of projects quickly and easily.

In September, 1981, the task force coordinated DWR's publication, "Analysis of Recently Proposed Hydropower Projects in California, Including Environmental Impacts." This report, which has been provided to the Committee) tabulates all proposed hydro projects (large and small) at existing facilities and at undeveloped sites -- that is, sites where no dam or other hydraulic structure now exists. Its purpose is to identify proposed projects, compile technical information on each project, and most importantly, estimate the potential cumulative adverse environmental impacts of the projects.

The task force activities are coordinated with the U. S. Department of Energy (DOE) and FERC by their representatives attending task force meetings. DOE also partly funded the cost of DWR's Bulletin 211, and shares half the cost of the Department's outreach program. The purpose of the outreach program is to encourage rapid development of small hydro facilities that are technically, economically, and environmentally sound. A newsletter is published bimonthly, and in September a highly successful workshop was held in Redding. It

was attended by 450 persons, including developers, consulting engineers, utility representatives, local, State and federal government officials, and financiers. Workshop speakers discussed FERC regulations, environmental concerns, water rights, utility contracts, and financing.

Current Issues

In recent months, an unprecedented number of applications for hydro projects have been filed with FERC. The Commission presently has more applications pending nationwide (about 2,000) than it had received in the prior 50 years. As of September, 450 FERC applications were pending in California, many of them competing applications for the same site. Approximately 100 applications, totaling 375 MW, are for projects at existing facilities. As of August 1, 1981, there were 185 applications, totaling over 600 MW, for projects at undeveloped sites -- that is, sites on free flowing streams where diversion structures, impoundments, and conduits are required to develop a plant. D

If all or most of the proposed projects at undeveloped sites were built, the result could be serious adverse environmental impacts on fish and wildlife, water quality, recreation, scenic values, and other instream resources. Consequently the task force, which previously worked to promote small hydro at existing dams and aqueducts, has turned its attention to the new issues raised by the great number of proposals for undeveloped rather than existing sites.

Several elements led to the rush for hydropower. Developers, equipment makers and consultants began to see a potential gold mine in small hydro projects. The Public Utility Regulatory Policies Act (PURPA), requiring utilities to pay "avoided costs" for energy, and

encouragement from FERC's expedited licensing processes, led many to believe that high profits from small hydro were an easy matter. Lending institutions added to the optimism by touting the potential benefits to be obtained from energy and investment tax credits.

All of this resulted in the flood of applications to FERC. As local governments, public interest groups, and State agencies became aware of the great number of proposals, great concern arose over the potential impacts. To address these concerns, the task force has adopted a State policy to govern small hydro development in California. We continue to support small hydro both at existing facilities and at undeveloped sites where projects will have little or no adverse environmental effect. The primary purpose of this State policy is to guide developers and public agencies so that developing new energy sources will not mean needless destruction of valuable public resources. I have attached a copy of the policy statement, and we can discuss it at greater length if you wish.

The task force will continue to address the issues, concerns, and problems connected with developing small hydro both at existing facilities and at undeveloped sites. Competing applications, although primarily an FERC responsibility, will be closely monitored by the task force.

For example, there are two competing applications to build a power plant at the debris dam on Lake Clementine on the north fork of the American River. Not only are the applicants competing, but the project would be flooded out if Auburn Dam is built. Obviously, there is a need for a government agency not only to judge between applicants, but to decide whether the projects should be built at all.

Individually, small hydro projects at new sites may not have a significant effect on the environment. However, many projects on a river system may have an accumulative impact on instream resources that is unacceptable. For example, at least 15 hydro projects are proposed on the Owens River watershed that would impact 65 kilometres (40 miles) of free-flowing streams. If built, these projects could cause a significant loss to the watershed's trout fishery.

Another problem the task force has learned of is the construction in progress at the Baily Creek Ranch Project without an FERC license and without complying with the California Environmental Quality Act. FERC has directed that work on this project stop until all the required approvals are obtained.

The task force is just getting into these issues. We are continuing our close association with DOE and FERC and are describing the latest issues and rulings in our newsletter. We feel that the State policy which we announced today will be a significant help in identifying areas on which new hydro projects are acceptable and in alerting developers to those issues surrounding development of those sites.

We have testified before the U. S. Subcommittee on Water and Power of the Senate Energy and Natural Resources Committee at a hearing on the issues surrounding the development of small hydro. I will provide your committee with our testimony.

Through its bi-monthly meetings, the task force will continue to serve as a forum for identifying and advising on problems in small hydro development, and will do its utmost to encourage that energy resource wherever it is feasible.

Thank you for this opportunity to present the activities of the task force. I will be happy to answer any questions you may have.

STATE POLICY ON DEVELOPMENT
OF SMALL HYDROELECTRIC PROJECTS

The State of California supports and encourages the development of small hydroelectric power projects (30 MW or less) as a renewable energy resource, provided:

1. Projects are not located on:
 - a. Components of the California and National Wild and Scenic Rivers System,
 - b. Rivers designated for study pursuant to Section 5 (a) (16 U.S.C. 1276 (a)) of the National Wild and Scenic Rivers Act^{1/},
 - c. Federally designated wilderness areas,
 - d. Roadless Area Review Evaluation II areas,
 - e. Areas designated as "Critical Condor Habitat" by the U. S. Fish and Wildlife Service^{2/}, or
 - f. Waters designated as "Wild Trout Waters" by the California Fish and Game Commission^{3/}.
2. All beneficial instream uses including riparian habitat, aquatic habitat, recreational use and access, and water quality are identified and measures provided to fully protect and preserve them.
3. Adverse impacts associated with the project are identified and measures provided to fully offset those impacts.
4. The project proponent consults early in the project formulation with the Department of Fish and Game, the Department of Boating and Waterways, the Department of Parks and Recreation, the State Water Resources Control Board, the Department of Water Resources, and other appropriate Federal, State, and local agencies to obtain technical assistance and the required permits and approvals. (The attached Small-Scale Hydro pamphlets provide additional information on this item.)

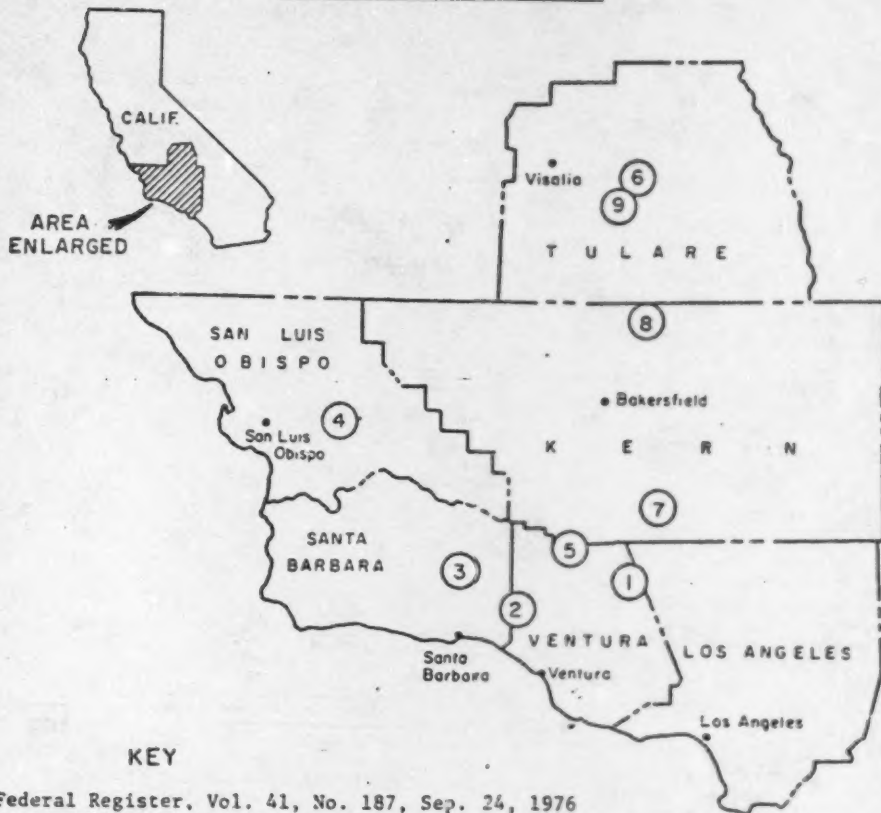
Projects at existing hydraulic structures are preferred energy resources because they have less potential for adverse effect on the environment.

^{1/} Tuolumne River from its source on Mount Dana and Mount Lyell in Yosemite National Park to Don Pedro Reservoir.

North Fork of the Kern River from its source to Isabella Reservoir.

^{2/} See attachment entitled "Critical Condor Habitat".

^{3/} See attachment entitled "Wild Trout Waters".

CRITICAL CONDOR HABITAT

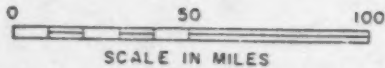
KEY

Federal Register, Vol. 41, No. 187, Sep. 24, 1976
Paragraph 17.64 California Condor

(a)

- (1) Sespe-Piru Condor Area
- (2) Matilija Condor Area
- (3) Sisquoc-San Rafael Condor Area
- (4) Hi Mountain-Beartrap Condor Areas
- (5) Mt. Pinos Condor Area
- (6) Blue Ridge Condor Area
- (7) Tejon Ranch
- (8) Kern County rangelands
- (9) Tulare County rangelands

N



SCALE IN MILES

UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

DETERMINATION OF CRITICAL HABITAT
FOR
CALIFORNIA CONDOR

WILD TROUT WATERS

The Fish and Game Commission recognizes the strong interest of many people in wild trout angling opportunities. Accordingly, the Commission will designate certain State waters to be managed exclusively for wild trout.

Waters designated by the Commission for wild trout management shall meet the following criteria:

1. Angler access

a. Open for public angling with unrestricted access.

(1) Of sufficient dimensions to accommodate anglers without overcrowding.

b. Open for public angling with controlled access.

(1) Under a plan approved by the Commission on an individual basis setting forth the numbers of anglers and the method of distribution.

2. Able to support, with appropriate angling regulations, wild trout populations of sufficient magnitude to provide satisfactory trout catches in terms of both number and size of fish.

Wild trout waters shall be managed in accordance with the following stipulations:

1. Domestic strains of catchable-sized trout shall not be planted in designated wild trout waters.

2. Hatchery-produced trout of suitable wild and semi-wild strains may be planted in designated waters, but only if necessary to supplement natural trout propagation.

3. All necessary actions, consistent with State law, shall be taken to prevent adverse impact by land or water development projects on designated wild trout waters.

The following waters are designated by the Commission as "wild trout waters":

1. American River, North Fork, from Palisade Creek downstream to Iowa Hill Bridge (Placer County).

2. Carson River, East Fork, upstream from confluence with Wolf Creek excluding tributaries (Alpine County).

3. Clavey River, upstream from confluence with Tuolumne River excluding tributaries (Tuolumne County).

4. Fall River, from Pit No. 1 powerhouse intake upstream to origin at Thousand Springs including Spring Creek, but excluding all other tributaries (Shasta County).
5. Feather River, Middle Fork, from Oroville Reservoir upstream to Sloat vehicle bridge, excluding tributaries (Butte and Plumas counties).
6. Hat Creek, from Lake Britton upstream to Hat No. 2 powerhouse (Shasta County).
7. Hot Creek, from Hot Springs upstream to west property line of the Hot Creek Ranch (Mono County).
8. Kings River, from Pine Flat Lake upstream to confluence with South and Middle forks excluding tributaries (Fresno County).
9. Kings River, South Fork, from confluence with Middle Fork upstream to western boundary of Kings Canyon National Park excluding tributaries (Fresno County).
10. Merced River, South Fork, from confluence with mainstem Merced River upstream to western boundary of Yosemite National Park excluding tributaries (Mariposa County).
11. Nelson Creek, upstream from confluence with Middle Fork Feather River excluding tributaries (Plumas County).
12. Owens River, from Five Bridges crossing upstream to Pleasant Valley Dam excluding tributaries (Inyo County).
13. Rubicon River, from confluence with Middle Fork American River upstream to Hell Hole excluding tributaries (Placer County).
14. Yellow Creek, from confluence with North Fork Feather River upstream to confluence with Cottonwood Creek excluding tributaries (Plumas County).
15. Cottonwood Creek, upstream from confluence with Little Cottonwood Creek, including tributaries (Inyo County).
16. Klamath River, from Copco Lake to the Oregon border (Siskiyou County).
17. Martis Creek Reservoir (Placer and Nevada counties).
18. McCloud River, from Lake McCloud Dam downstream to the southern boundary of Section 36, T38N, R3W, M.D.B.&M. (Shasta County).

State of California
Edmund G. Brown Jr., Governor

SMALL-SCALE HYDRO

Uncertain oil supplies, environmental constraints, and unsolved technical problems of conventional energy sources have focused attention on the limitations of our natural and energy resources. These factors have caused California to look for alternative energy sources. Fortunately, California has one energy resource that can be both environmentally acceptable and is renewable; moreover the technology exists for its use. This resource is hydroelectric power.

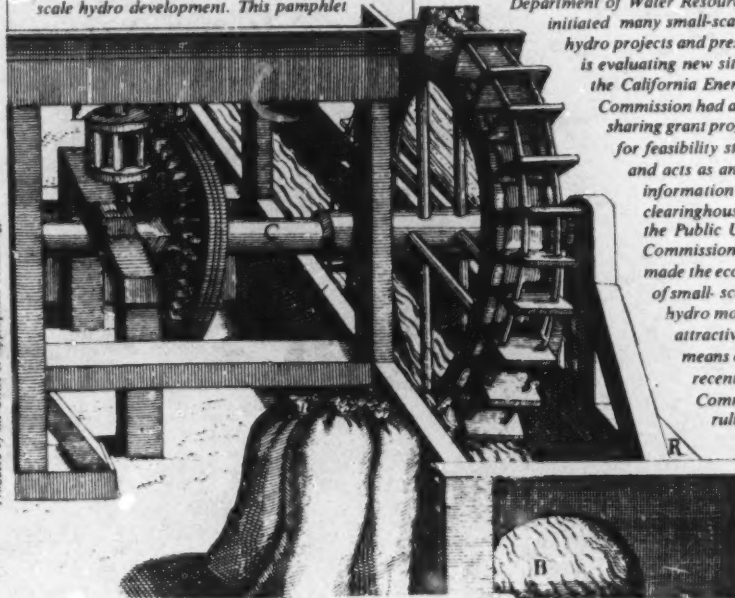
At present, hydroelectric power supplies approximately 18% of the electricity Californian's demand. Though much of this electricity is produced by large-scale hydro projects, small-scale hydropower accounts for about 700 megawatts. By 1991 the potential capacity is estimated at an additional 750 megawatts, totalling 1450 megawatts of power from small-scale hydro development. This pamphlet

briefly explains the regulations and potential hurdles that confront the small-scale hydro-power developer, as well as available financial assistance. The pamphlet is directed at special districts, private individuals, small utility companies and municipalities that may have sites available for small-scale hydroelectric power generation.

Because many of the best sites for large-scale hydroelectric generation have already been developed, future work will concentrate on smaller facilities. Both the federal and State governments are interested in small-scale hydroelectric plants and have established programs to help people develop small hydro sites. In California, the Department of Water Resources, California Energy Commission, and the Public Utilities Commission are most active in the small-scale hydro field. The

Department of Water Resources has initiated many small-scale hydro projects and presently is evaluating new sites; the California Energy Commission had a cost sharing grant program for feasibility studies and acts as an information clearinghouse; and the Public Utilities Commission has made the economics of small-scale hydro more attractive by means of recent Commission rulings.

Produced by the Office of Appropriate Technology



Determining Economic Feasibility

Determining Economic Feasibility

The greatest opportunities for small-scale hydro are in existing sites such as dams, canals, ditches, piped water systems, and outfalls at wastewater treatment plants. One reason that small-scale hydro is environmentally acceptable is that most potential sites are already built; consequently, small-scale hydro's environmental impact is usually limited. In some cases adding small power generation equipment may improve the environmental aspects of the water way.

Once a group identifies a site believed suitable for hydroelectric development, it should perform a reconnaissance study to determine if a more detailed and costly feasibility study is warranted. A reconnaissance study appraises the site's potential and includes a rough economic analysis covering estimated power potential, instal-

lation cost and value of power produced. It also identifies potential problems in developing a site, such as legal rights, soundness of facility structure, site suitability, environmental constraints, financing, and the revenue needed to support the project.

The Department of Energy has published a pamphlet entitled "A Guide for Small Hydroelectric Development" that provides a simplified explanation on how to determine roughly whether or not a hydroelectric project is possible at a given site. This publication may be helpful in performing the reconnaissance study and is available from:

U.S. Department of Energy
Idaho Operations Office
Hydropower Program
550 Second Street
Idaho Falls, Idaho 83401
(208) 526-1801

The feasibility study basically examines the same issues, but in more detail. While a reconnaissance study may take two to three days, the feasibility study will require more time. The main objective of the feasibility study is to determine the economic, technical, and environmental feasibility of the proposed project. The study should specify the project cost, installed capacity, annual generating capability, cost of power, wheeling costs, buy-

back options, regulatory requirements and how they will be met, environmental impacts and how they will be mitigated, a strategy for implementing the project, construction required at the site, and how the project will be financed. Though the study's objective is to determine the feasibility, it should address how recreation, water quality, and fish and wildlife habitat can be enhanced. The feasibility study should include a preliminary design for equipment installation.

The parties interested in developing a site may require the services of a consulting firm or larger utility company to complete reconnaissance and feasibility studies. Fees for the services will vary but should generally follow the American Society of Civil Engineers' outline in its publication, *Engineering Practice, No. 45, Consulting Engineer. . . A Guide for the Engagement of Engineering Services*. The services of an environmental consultant may also be required.



Potential Obstacles

Potential Obstacles

For the most part, developing small-scale hydro offers few problems once the project is shown to be feasible. There are, however, considerations that interested people should be aware of before final financial decisions are made. These are: Knowing the regulations, negotiating power rates, and financing construction.

Knowing the Regulations

There are many State and federal agencies that may play a part in developing a small-scale hydro project. Following is a list of such agencies, with a brief discussion of the more important ones.

STATE

Water Resources Control Board — Responsible for questions regarding water rights and water quality, the Water Resources Control Board (WRCB) may require applications for new water rights or petitions for change in existing rights to cover small-scale hydro projects. Where the water flowing through the turbine is completely covered, both as to amount and as to season, under existing permits and licenses, i.e. the operation of the turbine is strictly incidental to the movement of water to meet the requirements under existing permits and licenses, a petition for change in the existing rights may be required. (This is contingent upon a change in the Board's regulations which is expected to be completed before September 1, 1980.) Otherwise, a new

application will be required. The WRCB does not have jurisdiction over water flowing through the turbine if the water is fully used under riparian claim, or pre-1914 appropriative claim, or is ground water which was not flowing in a known and definite underground channel before extraction. There are no water rights requirements on power projects that develop power from outfalls of wastewater treatment plants. Before the initial study and/or negative declaration are prepared it is important that the small-scale developer consult with WRCB staff. For more information contact: Division of Water Rights State Water Resources Control Board 77 Cadillac Drive Sacramento, California 95825 (916) 322-3580

Division of Safety of Dams — Located within the Department of Water Resources (DWR), the Division of Safety of Dams requires permits on new construction at existing dams. The Division's jurisdiction covers all dams listed in DWR Bulletin #17 (available from DWR, address listed on page 8). For more information on the type of permit required contact: Division of Safety of Dams Department of Water Resources 1416 9th Street Sacramento, California 95814 (916) 445-1520

The Reclamation Board

— Like the Division of Safety of Dams, the Reclamation Board is part of the Department of Water Resources. The Board has jurisdiction over the Central Valley — the San Joaquin and Sacramento River basin — and may require a permit for construction of a hydroelectric facility in the Central Valley. More information on the Board's activities is available from: The Reclamation Board Department of Water Resources

1416 9th Street
Sacramento, California
95814
(916) 322-1573

Department of Fish and Game — By virtue of State and federal laws, the Department of Fish and Game reviews, evaluates, and makes recommendations to be included in permits issued by other agencies to mitigate effects on fish and wildlife associated with the construction of a hydroelectric project. Permission is required to work in any streambed and may be required before dams are altered to promote or impede fish passage. This Department encourages beneficial impacts such as improved bypass flow regimes and maintenance of adequate water temperature for fish through proper tapping of a reservoir level. It discourages harmful impacts such as endangered plants and

Potential Obstacles



wildlife. To obtain more information on Department of Fish and Game criteria contact:

Department of Fish and Game
1416 9th Street,
12th Floor
Sacramento, California
95814
(916) 445-3531

Lands Commission —

Though most small-scale hydro projects will not be located on navigable water ways, projects that are will need a permit from the State Lands Commission. To determine whether or not a project is under the jurisdiction of the Lands Commission contact:

State Lands Commission
1807 13th Street
Sacramento, California
95814
(916) 445-7708

Resources Agency — Because small-scale hydro projects may temporarily affect the environment adversely, some projects will need to meet the requirements of the

California Environmental Quality Act (CEQA). The Resources Agency is knowledgeable with CEQA requirements and will assist hydro developers understand and meet them. For further information contact:

Resources Agency
Attention: Norman Hill
1416 9th Street, Room 1311
Sacramento, California
95814
(916) 445-9134

Office of Permit Assistance

— As part of the Office of Planning and Research, the Office of Permit Assistance will help small-scale hydro developers in identifying all permits necessary for a specific project. The OPA has prepared a Permit Handbook describing in detail permits issued by State agencies for projects that affect the environment. The Office will also help in setting up meetings with key agencies likely to be involved in the project. To find out more about OPA contact:

Office of Permit Assistance
1400 Tenth Street
Sacramento, California
95814
(916) 445-0613

Potential Obstacles

Other State Agencies: — The following list contains additional State agencies that may be involved in the review of a proposed project. Each is involved in the development of small-scale hydroelectric power but will not require a permit.

- California Energy Commission
- Governor's Office of Appropriate Technology
- Office of Historic Preservation
- Public Utilities Commission
- Department of Water Resources

FEDERAL

Federal Energy Regulatory Commission — FERC may require a license for non-federal hydroelectric projects of any capacity that: (1) occupy in whole, or in part, lands of the United States; (2) are located on navigable waters of the United States; (3) use surplus water or water power from a government dam; or (4) affect the interests of interstate commerce may require a license from the Federal Energy Regulatory Commission.

FERC has developed a short form application procedure for projects under 1.5 MW capacity. Different application procedures apply to projects above 1.5 MW. There is also an application procedure for exemption of small hydroelectric facilities up to 15 MW located on man-made conduits which are built and operated for purposes other than hydroelectric generation. This includes irrigation canals, pipelines, flumes, wastewater, or domestic water systems, etc. Information on all FERC license or exemption requirements may be obtained from:

Federal Energy Regulatory Commission
San Francisco Regional Office
333 Market Street,
8th Floor
San Francisco,
California 94105
(415) 764-7137

U.S. Army Corps of Engineers — Hydroelectric projects that require excavation from an adjacent stream need a permit from the U.S. Corps of Engineers. The Corps issues permits when a project locates a structure, exca-



Potential Obstacles

vates, or discharges dredged material or fill into U.S. waters. U.S. Army Corps of Engineers Pamphlet (EP) 1145-2-1 explains the procedure for filing and the requirement for a permit; it may be obtained by contacting the District Corps office that has jurisdiction over the area where the project is located.

U.S. Fish and Wildlife Service — Under federal laws, the Fish and Wildlife Service reviews, evaluates and makes recommendations to be included in all FERC licenses to mitigate effects of hydroelectric projects on fish and wildlife. To obtain more information on Fish and Wildlife procedures contact:

U.S. Fish and Wildlife Service
Division of Ecological Services
Attention: Area Supervisor
2800 Cottage Way
Sacramento, California 95825
(916)484-4731

LOCAL

Groups initiating a small-scale hydro project should check with local authorities to see if building permits are required.

Negotiating Power Rates

In the past, owners of potential small-scale hydro sites have had problems marketing their power and obtaining economical transmission (wheeling) costs. Some projects have been cancelled because the problems could not be overcome. Both the Public Utilities Commission (PUC) and the California Legislature have been working to eliminate these obstacles.

First, as a result of PUC directives evolving from an ongoing Commission proceeding, Order Instituting Investigation No. 26 (O.I.I. #26), and the implementation of federal legislation, California utilities are required to purchase electricity from small-scale hydropower producers at prices which reflect the utility's "avoided cost." Presently, this is based on the price of oil and reflects the cost the utility avoids by not having to produce an equivalent amount of electricity. In 1980 these prices are likely to exceed 5 cents per kilowatt-hour (kWh) and are expected to escalate with the price of oil. This will undoubtedly benefit many projects which were previously marginal. To obtain more information on OII-26 and other Commission action in the area of small-scale power production, please contact the PUC:

Public Utilities Commission
Small Scale Hydro Information
Attention: Executive Director
350 McAllister Street
San Francisco, California 94102
(415) 557-2445

The PUC has requested the electric utilities in California to publish schedules of their "full avoided cost" and make these available to existing and potential

small-scale power producers. Copies of these can be obtained by contacting the following utilities directly:

Pacific Gas and Electric Company
Small Power Productions Information
77 Beale Street
San Francisco, California 94106
(415) 781-4211, Ext. 2681

San Diego Gas & Electric Company
Attention: Terry Sinnott
P.O. Box 1831
San Diego, California 92106
(714) 232-4252

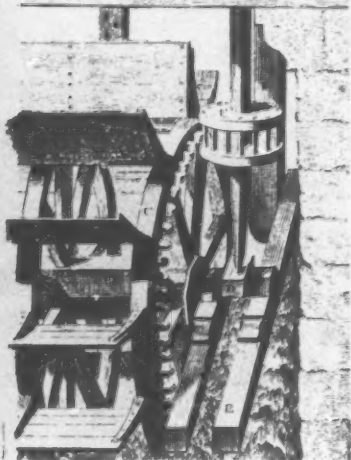
Southern California Edison Co.
Cogeneration and Small Power Production
Box 800
Rosemead, California 91770
(213) 542-1419

The second area of concern is the ability to transmit power economically. Owners that propose to use their own power but have no transmission lines must rely on the larger utilities for assistance. In the past the larger utilities have been cautious of wheeling, or transmitting, power other than their own. Currently the California Legislature is considering legislation that would require utilities to wheel power produced at hydroelectric facilities under 25 megawatts. If the bill does not pass, then the utility companies will have the discretion to or not to connect with the hydroelectric facility.

State and Federal Financial Assistance

Financing Construction

One of the most critical problems that may face the development of a hydro site is the ability to raise capital for construction. Many financing options are available to the site owner, and each will have to be evaluated extensively. In the past, public agencies could not issue tax-exempt bonds to generate capital if they sold more than 25 percent of their power to a private utility. In March 1980, the federal government corrected this problem; the Windfall Profits Tax Act allows the use of tax-exempt bonds for small-scale hydro projects. The Windfall Profits Tax Act has also provided added incentive for the private sector interested in small-scale hydro. A private person who sells power to a utility company may now use a tax investment credit of 21% on the project cost. More information may be obtained from a financial consultant or from the Department of Water Resources.



State and Federal Financial Assistance

department of Energy — In 1977, the Department of Energy (DOE) established the Small Hydroelectric Program to promote the development of hydroelectric power at existing dams. The program provides financial assistance, through loans not exceeding \$50,000, and technical assistance. The financial assistance is offered two ways:

1. Loans for up to 90 percent of the cost of a feasibility study. The study must be for a small hydroelectric project (more than 100 kilowatts but less than 15,000) at a dam in existence since 1977. Loan money is available at 7½% interest and repayment can be made over a 10-year period. A special feature of this program is that a loan may be forgiven if the project is determined not feasible or if construction cannot be started.
2. Loans for up to 90 percent of the cost of licensing or getting necessary approval for projects shown favorable in a feasibility study.

In addition to financial assistance, DOE has provided funds to review various technical aspects of hydroelectric projects. Their reviews include:

1. Investigating the suitability of European turbine-generators;
2. Publishing manuals to provide site owners a step-by-step outline for construction of small power plants;
3. Conducting studies to determine the economic potential of low-head hydropower.

For more information on DOE programs contact:

U.S. Department of Energy
Attention: John Crawford
333 Market Street
San Francisco, California
94105
(415) 764-7084

California Energy Commission — The California Energy Commission (CEC) has conducted a small hydroelectric program that provided grants for feasibility studies. CEC required the applicant to share costs of the feasibility study. The program scope allowed for retrofitting hydroelectric equipment in existing dams, open channels, and piped-water systems. Future funds may be available for similar studies, and interested persons should contact CEC. CEC also holds workshops and seminars on small-scale hydro and acts as an information clearinghouse for the State. To learn more about the CEC program write:

California Energy Commission
Attention: Jim Helmich
1111 Howe Avenue, MS #64
Sacramento, California 95825
(916) 920-6106

Rural Energy Initiative (REI) — In May 1979 President Carter announced a multi-agency program as part of the Energy for Rural America Program to encourage and stimulate the construction of up to 100 small-scale hydroelectric projects by 1981. The multi-agency program is spearheaded by the Hydroelectric Resource Development Division of the Department of Energy. The agencies involved in the program include:

Rural Electrification
Administration
Farmers Home Administration

Other Resources

Economic Development
Administration
Urban Development Action
Grant Program (part of
Housing and Urban
Development — HUD)
Federal Energy Regulatory
Commission
Office of Community Action
(part of Community Service
Administration — CSA)

The Hydroelectric Resource
Development Division is respon-
sible for coordinating the tech-
nical and financial resources of
these agencies. Approximately
\$300 million has been reserved for
construction costs for sites chosen
by DOE, and Army Corps of
Engineers, Water and Power
Resources Service (formerly The
Bureau of Reclamation), and
FERC. For more information on
REI contact:

U.S. Department of Energy
333 Market Street
San Francisco, California
94105
(415) 454-7014

This pamphlet was prepared by the
Governor's Task Force on Small-
Scale Hydro that was formed in
January 1980 to promote the develop-
ment of small-scale hydropower. The
committee's objectives are to publish
information on the development of
hydro sites, to fully use State and
federal financial assistance programs,
to simplify licensing and regulatory
requirements, and to maximize State
agency development of small-scale
hydro. The committee consists of
representatives from:

Department of Water Resources, Chair
California Energy Commission
Public Utilities Commission
Office of Appropriate Technology
Office of Planning and Research
Department of Fish and Game
Department of Parks and Recreation
Department of General Services
Water Resources Control Board
State Lands Commission

Other Resources

department of Water
Resources — For many
years the Department of
Water Resources (DWR) built
large-scale hydroelectric facilities.
Then in 1976, DWR conducted a
survey to identify potential hydro
sites under 30 megawatts. The
survey resulted in the June 1979
publication of Bulletin 205, which
identified more than 200 sites with
a total capacity of 456 megawatts
and an average generating capa-
city of two billion kilowatt-hours.

More recently, the California
Legislature mandated that DWR
study the feasibility and cost-
effectiveness of equipping existing
dams and hydraulic structures
with electric power-generating
equipment. DOE has approved
funds to assist DWR in this study.
As a result, DWR is conducting
feasibility studies at 28 sites.
DWR hopes in the future to
expand the study to include all
sites identified in Bulletin 205
that have not already conducted
a feasibility study. For informa-
tion on DWR activities contact:

Department of Water Resources
1416 Ninth Street
Sacramento, California 95814

Designed by Donna Rivers.

Department of Water Resources
Attention: Arnie Johnson
P.O. Box 388
Sacramento, California 95802
(916) 323-0105

Army Corps of Engineers — The
Corps has just completed an
extensive guide entitled "Feasibil-
ity Studies for Small-Scale
Hydropower Additions." This
manual, which will help organiza-
tions that own an existing dam,
provides an excellent explanation
of reconnaissance and feasibility
studies. It details both the work
expected in the studies and also
a method of completing the work
efficiently. The Corps has also
prepared an inventory of potential
hydropower sites in California.
Both publications are available
from:

The Hydrologic Engineering
Center
609 2nd Street
Davis, California 95615
(916) 756-1104



SMALL-SCALE HYDRO

How to Accelerate State Review

In June 1980, the Governor's Task Force on Small Hydroelectric Development published a pamphlet titled *Small-Scale Hydro*. As a complement to that publication, this summary of the state environmental review process has been prepared to assist you in accelerating state review of your project.

The State of California supports the development of small-scale hydroelectric power generation at places where facilities such as dams, canals, or conduits presently exist and in a manner which does not significantly harm the natural resources of the state. You will find that state agencies will work with you to make the process of securing permits go smoothly.

THE MOST IMPORTANT STEP - EARLY CONSULTATION

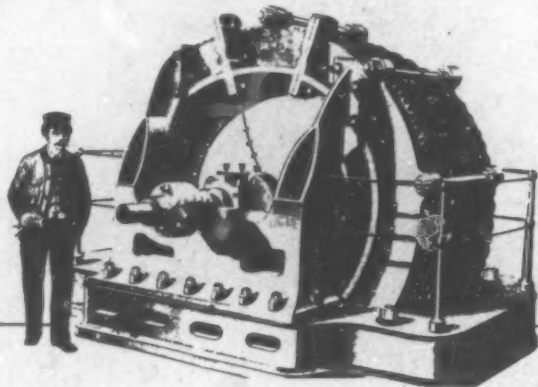
Even before discussing your project with state agencies, you should - and often must - discuss your project with the Federal Energy Regulatory Commission. The Commission's review process includes several options and exemptions that are difficult to describe in a brief pamphlet like this one. Talking with the Commission early in the planning of a small hydro project makes it possible

to coordinate the state and federal review of the project. The Commission is located at:

333 Market Street, 6th Floor
San Francisco, CA 94105
(415) 764-7137

After you have secured a site and the rights from the Federal Energy Regulatory Commission (FERC) to proceed with the necessary licensing requirements, you should begin to discuss your project with state agencies.

Because your project will most likely require review or permits from the Department of Fish and Game and the State Water Resources Control Board, you should contact them first. The Department of Fish and Game has five regional offices. You should contact the one with jurisdiction over the area where your project will be built.



Responsible Agencies

All the other agencies that have to issue permits for your project are called responsible agencies. You can file an application with a responsible agency at any time after you have filed with the lead agency. Most responsible agencies will not act on your project until after the lead agency has made its decision, because the law requires responsible agencies to base their decisions on the Negative Declaration or EIR prepared by the lead agency.

A responsible agency has to decide on your permit within 180 days after the lead agency issues its decision or within 180 days after accepting your complete permit application, whichever is later.

INFORMATION AND ASSISTANCE

There are two programs designed specifically to assist developers of small hydroelectric projects in understanding the technical and financial aspects of small hydro development in California:

California Energy Commission's
Small Hydro Development Program
(916) 924-2401

Department of Water Resources
Small Hydro Outreach Program
(916) 323-0103

A report on the Environmental Assessment of Small Hydroelectric Development at Existing Sites in California, issued by the Governor's Task Force on Small Hydroelectric Development, discusses impacts and mitigation. It can be used as a reference in initial studies, Negative Declarations, and EIRs.

If you would like a copy, or would like assistance in understanding the permit process, contact the Office of Permit Assistance. In addition, if you need help in identifying the lead agency or mediating issues with state or federal agencies, call or write:

Office of Permit Assistance
Governor's Office
of Planning and Research
1400 Tenth Street
Sacramento, CA 95814
(916) 322-9374

A GENERAL LOOK AT THE STATE'S ENVIRONMENTAL REVIEW PROCESS (Showing maximum time limits)

First, you submit your permit application to the lead agency:

Day 1	In writing, the lead agency accepts the application as complete.	or If the lead agency fails to respond in writing, the application is "deemed" accepted within 30 days after submittal.
Day 45	After consulting with responsible agencies, the lead agency determines that an EIR is necessary and immediately issues a Notice of Preparation.	or After consulting with responsible agencies, the lead agency elects to write a Negative Declaration and begins work on it.
Day 90	The lead agency receives comments on the Notice and begins writing the EIR.	
Day 105		The lead agency completes the Negative Declaration.

The lead agency issues the draft EIR and distributes it for public and agency review, holds a public hearing (optional), and completes the final EIR.

Day 365	The lead agency adopts the final EIR and reaches a decision on the permit.	or The lead agency adopts the Negative Declaration and reaches a decision on the permit.
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When you submit permit applications to the responsible agencies:

Day 1	In writing, the responsible agencies accept the applications as complete.	or If the responsible agencies fail to respond in writing, the applications are "deemed" accepted 30 days after submittal.
	The responsible agencies evaluate the project and consider the lead agency's environmental document.	
Day 180	The responsible agencies reach a decision on the permits.	



Prepared by the Governor's Office of
Planning and Research and the
California Energy Commission.

ACCOMPLISHMENTS
OF THE
GOVERNOR'S TASK FORCE
ON
SMALL HYDROELECTRIC DEVELOPMENT
August 1981

In January 1980, at Governor Brown's request, Secretary Huey Johnson appointed a State Task Force to promote and encourage the development of small hydroelectric resources at existing facilities in California. The following department heads are members of the Task Force:

Ronald B. Robie, Chairperson
Department of Water Resources

Peter Dangermond, Jr.
Department of Parks and Recreation

E. C. Fullerton
Department of Fish and Game

Deni Green
Office of Planning and Research

David E. Janssen
Department of General Services

Carla Bard
State Water Resources Control Board

John L. Geesman
California Energy Commission

Joseph E. Bodovitz
California Public Utilities Commission

William F. Northrop
State Lands Commission

At the first meeting of the Task Force, a goal of 250 MW of new capacity was established as a realistic estimate of the small hydro potential that could be developed within 5 years. By June 1981, Federal Energy Regulatory Commission permits

or license applications had been filed for development of approximately 300 MW of new capacity at existing facilities.

The Task Force has compiled an official list of potential hydro facilities at existing hydraulic structures. This list is continually updated and currently numbers about 300 sites. Progress on the development of these sites is monitored through notices published by the Federal Energy Regulatory Commission on Permit and License applications. To date, applications have been filed with the Federal Energy Regulatory Commission to develop 75 percent of the total energy from these sites.

The primary achievement of the Task Force in support of small hydro has been through publication of informational bulletins, reports, and pamphlets.

Small-Scale Hydro, Office of Appropriate Technology, June 1980.

This pamphlet briefly explains the regulations and hurdles that confront the small hydropower developer. It also discusses State and Federal financial assistance programs available for development of small hydroelectric power projects. Approximately 3,000 pamphlets have been distributed.

Small Hydroelectric Potential at Existing Hydraulic Structures in California, Bulletin 211, Department of Water Resources, April 1981.

This bulletin evaluates the cost effectiveness of 285 potential power projects at existing facilities. It also describes in detail the regulatory process for approval of small hydro developments.

How to Accelerate State Review, Governor's Office of Planning and Research, and California Energy Commission, July 1981.

This pamphlet describes the State environmental review process. It emphasizes the importance of early consultation with the agencies that will be reviewing proposed projects.

Environmental Assessment of Small Hydroelectric Development at Existing Sites in California, California Energy Commission, August 1981.

This report provides information on the types and ranges of environmental impacts that might be encountered on potential hydro projects. It will assist developers to evaluate the environmental feasibility of a project quickly and easily.

Another Task Force effort is to expedite regulatory reviews of small hydro projects. The State Water Resources Control Board has initiated adoption of regulation changes that allow adding incidental power as "a purpose of use" to existing permits and licenses. The Board now processes retrofit power applications on a priority basis.

In addition, the Task Force has reviewed and provided comments on the Federal Energy Regulatory Commission's proposed rulemakings to exempt small hydro projects from the provisions of the Federal Power Act. The Task Force has enthusiastically supported these exemptions, provided there are appropriate safeguards for examining the environmental impacts of proposed projects.

The Task Force also provides periodic reviews of the U. S. Army Corps of Engineers' National Hydropower Study, which

Congress authorized in 1976 to examine the nation's hydropower resources. The study was designed to develop an inventory of existing and potential sites; to estimate the magnitude and regional demand for future development based on supply and demand; to examine and assess the social, economic, environmental, and institutional factors that influence hydropower development; to suggest appropriate policies, strategies, and procedures to encourage further development; and to assess the impacts of an expanded hydropower development program. The results of the National Hydropower Study will be submitted to Congress in the fall of 1981. The Task Force will continue to closely monitor the legislative recommendations of the study to assure that California's interests are protected.

The Task Force has vigorously supported the California Public Utilities Commission's implementation of Section 210 of the Public Utility Regulatory Policies Act of 1978, governing the prices, terms, and conditions of electric utility purchases of electric power from small power production facilities. The Commission has issued an Interim Order, and the Final Order is expected soon. The terms and conditions in the final CPUC Order will have a significant effect on developers' ability to finance small hydropower projects.

**PUBLIC UTILITY DISTRICT
OF GRANT COUNTY**

P.O. BOX 878 • EPHRATA, WASHINGTON 98823 • PHONE 509/754-3541



PROGRESS

January 21, 1982

Ask of Clark

The Honorable Frank H. Murkowski
Chairman, Subcommittee on Water
and Power
Senate Committee on Energy and
Natural Resources
United States Senate
3121 Dirksen Senate Office Building
Washington, DC 20510

Re: Modifications of Federal
Power Act

Dear Senator Murkowski:

In connection with your subcommittee's current hearings on the subject of improvements to the Federal Power Act, Public Utility District No. 2 of Grant County would like to concur with a proposed amendment to the Act which would make possible exchanges of lands between licensees and federal agencies charged with managing lands of the United States.

Public Utility District No. 2 of Grant County holds Federal Energy Regulatory License No. 2114 for operating the Priest Rapids hydroelectric projects. The project consists of two developments, the Priest Rapids Development and the Wanapum Development, which involves two dams and reservoirs on the Columbia River. This District owns much of the land in the reservoir boundaries, but the United States continues to own approximately 1,127.54 acres in the Priest Rapids Reservoir and 1,565.28 acres in the Wanapum Reservoir. The District pays an annual charge to the United States for use of these lands as prescribed in the Federal Power Act.

The FERC has taken the position that once federal lands are included within the boundaries of a licensed hydroelectric project, the Act requires the licensee to continue paying annual charges to the federal government for the use of those lands even if the licensee acquires the fee title to those lands for the United States. This interpretation of the Federal Power Act was announced earlier this year and is

LIVE BETTER ELECTRICALLY

Senator Murkowski

-2-

January 21, 1982

holding up the proposed exchange of lands with the agencies of the United States having administrative jurisdiction over the lands. Obviously, the transaction cannot proceed because it would not be justified to acquire fee title to lands if an annual rent will continue to go on in perpetuity.

I understand that the modification proposed to the Federal Power Act would allow a licensee to acquire federal lands from the agency having administrative jurisdiction on reasonable terms once the FERC grants permission.

It is my understanding that the following language is proposed to be added to Section 10(e) of the Federal Power Act, and we certainly recommend that the committee give this change favorable consideration:

That no charge shall be made for the use of lands included in any project under the provisions of this Part which have been restored to entry, location, selection or other disposal under the laws of the United States and have been acquired by the licensee in fee subject to the provisions of Section 24 of this Part: Provided further,

Should any further information be needed, I would certainly be pleased to furnish it upon request.

Very truly yours,



Larry D. Peterson, Manager

RAM/ml

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